

# 2012 Prince William Neighborhood Conference

Saturday- February 25,2012

9 am- 3pm

Prince William County Complex-  
Woodbridge, VA



# The Homeowner/Condominium Assoc. Track

- Integrating Renters into HOA/COA Activities and Enforcement

## Presented By

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And

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# Integrating Renters into HOA Activities and Enforcement

- Successfully gaining buy-in (or compliance) with renters on Association priorities can be critical to a thriving neighborhood. We'll discuss ways to build harmony and assure stewardship.

How it starts...



# The Lawyers Perspective

...The Email or Phone Call

Any Manager: [anymanager@.com](mailto:anymanager@.com)  
Sent: Wednesday, July 6, 2011 4:04 pm  
To: Ami E. Pape  
Subject: XYZ Homeowners Association

Ami-

Hope the road trip is going well. I have a great picture in my head ☺

Met with XYZ HOA. They want to move forward with amending the documents to allow owners to designate a representative in writing to attend BOD meetings. Not to say to allow tenants but designate a representative. So you are to move forward with both (adding individual grounds maintenance and BOD meeting attendance).

Also, a question, can the owner provide power of attorney to his tenant so he attend BOD meetings?

Thanks and talk soon, Any Manager

Any Manager, CMCA, AMS, PCAM  
President  
Management & Consulting, Inc.  
12084 Agent Court  
Manassas, Virginia 20109  
(703) xxx-xxxx, extension 202



# Integrating Renters into HOA Activities and Enforcement

- It's all in your Government Documents



# PART ONE

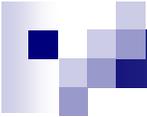
## Article 1: General Provisions

- (5) “Association Documents” means collectively, the Articles of Incorporation, this Declaration, and the Bylaws, all as amended from time to time. Any exhibit, schedule, certification or amendment to an Association Document is an integral part of that document.



# General Provisions Cont.

- Each Condominium of HOA is a  
“MEMBER ASSOCIATION”



# Declaration for XYZ HOA

THIS DECLARATION is made as of April 22, 2005 by DUKE CROSSING, INC. a Virginia corporation (“Declarant”); and XYZ Homeowners Association, a Virginia Nonstock corporation (“Association”).

## R E C I T A L S:

- R-1. The Declarant owns the land designated as “Submitted Land” in the legal description attached as Exhibit A hereto (and made a part hereof by this reference) and the Declarant desires to subject such land to the covenants, restrictions; reservations, easements, servitudes, liens and charges, all as more particularly set forth in this Declaration.
- R-2 The Declarant deems it desirable and in the best interest of future owners of the land to subject the Submitted Land to this Declaration to protect the value and the desirability of such land by providing for the development of such land in accordance with a common plan and for the maintenance of certain shared facilities.
- R-3 To provide a means for meeting the purposes and intents of the Declarant and the intents and requirements of the City (as hereinafter defined), the Declarant has created under the laws of the Commonwealth of Virginia, Quaker Ridge Homeowners Association (“Association”), **whose members shall consist of all owners of land within Property.**

- 
- (20) “Lot” means a portion of the Property which is separate, subdivided lot of record or any other parcel of Submitted Land held in separate ownership (but not including land designated as Common Area and owned by the Association or land dedicated for public street purposes), together with any improvements now or hereafter appurtenant thereto.
  - (24) “Owner” means one or more Persons who won a Lot in fee simple, but does not mean any person having an interest in a Lot solely by virtue of a contract or as security for an obligation. The term “Owner” is also used to mean a member of the Association
  - (25) “Person” means a natural person, corporation, partnership, association, trust or other entity capable of holding title or any combination thereof.

- 
- Section 1.2. Construction of Association Documents.
  - (b) Membership: Members of the Association shall at all times be, **and be limited to**, the Declarant (during the Development Period) **and the Owners**. If more than one Person owns a Lot, then all of such Persons shall collectively constitute one Owner and be one member of the Association. The Declarant and each such Person is entitled to attend all meetings of the Association. Membership in the Association is mandatory and automatic with ownership of a Lot.



- Section 3.6. Easement for Use of Common Area

- (a) Use and Enjoyment. The Declarant reserves to itself and its successors and assigns during the Development Period and grants to each Owner a non-exclusive right and easement of use and enjoyment in common with others of the Common Area, except as limited by the designation of Reserved Common Area. Each Owner is also hereby granted a non-exclusive easement for utility services and ingress and egress (including lead sidewalks, driveway aprons and utility laterals) over the Common Area to the extent necessary to provide vehicular and pedestrian access to such Lot for such Owner and such Owner's household members, tenants, guest, employees, agents and invitees.



# CONT...

- (b) Delegation. Subject to the Rules and Regulations and such other restrictions as may be adopted by the Association, any Person having the right to use and enjoy the Common Area may delegate such rights to such Person's household members, tenants, guest, employees, agents and invitees and such other Persons as may be permitted by the Association. The easements and rights granted by this Declaration shall not be enforceable by Persons to whom such easements and rights may be delegated by Owners, including without limitation the household members, tenants, guest, employees, agents and invitees of any Owner.



# The Lawyers Perspective

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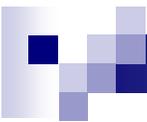
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# Can Tenants Attend Board Meetings?

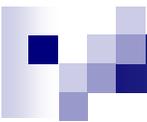
- You must look at what the Governing Documents say



# Can Tenants Attend Board Meetings?

- Section 4.2 Meetings of Directors

(a) Types of Meetings. The first (organizational) meeting of the Board of Directors following an annual meeting of the Association shall be held. ...All meetings of the Board of Directors shall be open to Owners as observers, except that the President or presiding officer may call the Board into executive session on sensitive matters such as personnel, litigation strategy or hearings with respect to violations of the Association Documents or as otherwise permitted by law. Any final action taken by the Board of Directors in executive session shall be recorded in the minutes. The Board of Directors may hold their meetings in the Commonwealth of Virginia or outside the state as the Board may from time to time determine.



# Can Tenants Attend Board Meetings?

- The governing documents do state that “All Board meetings shall be open to the Owners as observers...” and that only owners are members of the Association.
- The Board is required by the plain language to permit the owners to attend the meetings by right, but does not address rights of persons other than members to attend a meeting.
- If the language of a statute [bylaws] is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it. The plain language does not address guest and tenants, and therefore excludes them as having a right to attend the meetings.



# Can Tenants Attend Board Meetings?

- If a member brings a guest, the board could exclude that guest from attending the meeting if they were so inclined. Only owners are permitted to observe board meetings without some policy in place that would extend that privilege to non-members.



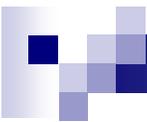
# Can Tenants Attend Board Meetings?

- If a member brings a guest, the board Often, owners with tenants will try to grant their tenant a proxy to attend Board meetings. It is unlikely that any proxy document is going to ever overcome the restriction that Board meetings are for the members to attend.



# Can Tenants Attend Board Meetings?

- The board asked about “Power of Attorney” and whether an owner could use that instead of the changes requested to the Bylaws and Declaration.
- A Power of Attorney is a very specific appointment of one person for another, with the latter acting as the first's legal attorney (so that doesn't work) or as their agent.
- Under the XYZ HOA documents, the owner is only allowed to appoint someone in their place with a proxy, which is limited in scope to voting on a particular issue, and a proxy is generally only used when issued by the association itself
- Proxies typically issued for member meetings only.

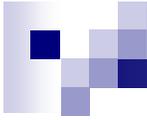


# Can Tenants Attend Board Meetings?

- Nothing in the VPOAA would alter that prohibition and grant a unilateral right of appointment, as the only place where the owner can designate another person to exercise his rights would be under the right to inspect the documents (55-510, generally) [note the right to appoint another to inspect documents is actually expanded in the XYZ HOA Bylaws at Article 9.2 to include the owner, their attorneys, accountants Mortgagees and authorized agents] or to receive a disclosure package (55-509.6) Members simply do not have the power to appoint another, except in the matter of Proxies, limited to voting, or when the owner and member is not a natural person (then a voting certificate or proxy from the company, LLC, trust or partnership is required).



How can you make renters an integral part of your community with Governing Documents like this?



- Vote on an Amendment to the Bylaws, to Article 4, Section 4.2(a) to permit Owners to designate a representative that will be permitted to attend Board meetings as follows:

- 
- ***All Board meetings shall be open to the Owners as observers. Owners may designate a single representative person to attend Board of Director's meetings in their stead. Any such designation must be in writing, signed by the record owner or owners, and executed before a notary public, and provided to the Secretary or Managing Agent. Written designation of such representative shall be valid for 11 months from the date of full execution, and must be revoked by written document filed with the Association. Duly designated representatives may participate as observers and in Open Forums, where appropriate. All meetings of the Board of Directors shall be open to Owners as observers, except that***  
The President or presiding officer may call the Board into executive session on sensitive matters such as personal, litigation strategy or hearings with respect to violations of the Association Documents or as otherwise permitted by law...



# The Managers Perspective

Hilary Lape, HOA Division Director

Legum & Norman, Inc., AAMC

3130 Fairview Park Drive, Suite #200

Falls Church, Virginia 22042-4529

Ph-703-848-4349



# Integrating Renters Into Communities

1. Community spirit
2. Governance



# Community Spirit

- Community events
- Volunteer opportunities
- Communications (website, newsletter, etc.)



# Governance

Renters are incorporated into community's governance through:

- Committee participation
- Document accessibility





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