Keeping the peace in subdivisions

State requires complaint process

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New state requirements are making sure that HOAs listen to homeowner complaints.

Starting next month, legislation requires "common interest community associations" to set up an internal complaint process. That should give people a better crack at taking care of neighborhood business, and improve transparency as well.

"It really should help associations resolve conflicts," said Common Interest Community ombudsman Heather Gillespie in Richmond.

The requirement follows 2008 legislation that established a state board and ombudsman for HOAs. At the time, a number of communities in Northern Virginia were reeling from a property manager who had embezzled millions from their associations.

Elsewhere, legislators statewide "were getting an earful" from property owners complaining about things happening in their condo associations or subdivisions. "[Complainants] would completely bypass their associations," she said in an interview. "They would often not even tell the association."

In response, legislators set up the ombudsman office and other provisions, including the requirement for an internal complaint process.

Local attorney Susan Tarley represents dozens of HOAs here and is hosting two seminars on the subject, with one already booked full. Tarley said the new process should provide "an effective alternative to expensive litigation in resolving complaints where associations are not complying with the law." That would apply "whether such non-compliance is intentional or as a result of the association being unaware of its obligations under state laws and regulations,"

The new regs are limited though. If a homeowner wants to paint his shutters lavender, not the dove gray that the association requires, the state isn't concerned. The ombudsman's office reviews complaints only to see whether the association violated *state law*..

Enforcement of architectural guidelines, bylaws, covenants and such are all classified as contractual agreements, enforceable by a court.

Meeting notification provides another common example. Many homeowners associations believe that they only have to give notice of the annual meeting. The state requires notice of all meetings.

If a homeowner complained to the association through the new complaint process and the problem continued, the homeowner could appeal to the ombudsman, because notice is a matter of law.

Most local issues have been internal complaints, but there have been legal challenges as well. In 2010 a Kingsmill resident and William & Mary law instructor challenged the makeup of Kingsmill's Community Services Association board, arguing that state law prohibits developers from controlling communities in perpetuity. At some point, control should pass to homeowners.

His suit failed. Anheuser-Busch had given itself perpetual control of the board when it set up the gated community in the 1970s. In short, Kingsmill was grandfathered. The suit was thrown out and the Virginia Supreme Court declined to take it up. Busch Properties retains a 5-4 majority even though its role within the compound is greatly diminished.

In that case, after the internal complaint, Gillespie's office could have weighed in on the question of the law. If Gillespie's office had found Kingsmill to be at fault and not willing to become compliant, the case could have been referred to the state's Common Interest Community Board.

Want to go? *Tarley's second free seminar will be held 6-7:30 p.m. on Thursday, Sept. 13, at the William E. Wood Training Center, 5208 Monticello Ave. Call 229-4281 or email klowery@tarleyrobinson.com to register. Visit www.dpor.virginia.gov to learn more.*