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To: Interested Parties
Date: July 1, 2008
Subject: Proposed Legislative Amendments for 2009 Session

Following the meeting of the Common Interest Communities Work Group of the Virginia Housing Commission in Richmond on June 26, 2008, Todd Sinkins and I redrafted the proposed changes to the law in order to: (1) solve the problems raised by the Lake Arrowhead and Dogwood I and II cases, (2) address the non-congruent definitions of “Common interest community” and “Development” in the POA Act created by Chapter 851 of the 2008 Acts of Assembly (formerly HB 516) and (3) facilitate reformation of recorded covenants when the method set forth in the covenant itself is impractical. Subject to the comments of everyone concerned, we think these changes will accomplish those goals. Although these changes may have an impact on the Lake Holiday project, we do not think that they can affect the outcome of the current litigation.

1. Amend the definition of “Common interest community in Section 55-528 as follows:

“Common interest community” means real estate located within the Commonwealth which is a development subject to Section 55-508 et seq., a condominium subject to Section 55-79.39 et seq., a cooperative subject to Section 55-424 et seq., or a timeshare project subject to Section 55-360 et seq. containing lots or units, at least some of which are residential or occupied for recreational purposes.

2. Amend the definition of “Declaration”, “Development” and “Property owners’ association” in Section 55-509 as follows:

“Declaration” means any instrument or group of instruments, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that (i) grants rights to the association with respect to the common area or imposes maintenance or operational responsibilities on the association with respect to the common area; (ii) authorizes the association to impose on lots, or on the owners or occupants of such lots, any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area; or (iii) requires any person owning a lot subject to the instrument to be a member of an association governing the real estate. “Declaration” includes any amendment or supplement to the instruments described in this definition. “Declaration” shall not include a declaration of a condominium, real estate cooperative, time-share project or campground. A series of declarations or deeds of dedication requiring the owners

of the lots subject thereto to be members of the same association shall be deemed to create a single "development."

"Development" means real estate located within this Commonwealth subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, and common areas, and within which any person owning a lot subject to the declaration must be a member of an association governing the real estate.

"Property owners' association" or *"association"* means an incorporated or unincorporated entity with mandatory membership by the owners of lots subject to a declaration which creates a development.

3. Add a provision to the Virginia Code (not within the Property Owners' Association Act) authorizing limited judicial reformation as follows:

If a vote or consent required to amend a recorded instrument containing restrictive covenants for real estate governed by an association of owners of the real estate subject to such instrument is unsuccessful on three separate occasions because (1) no quorum could be obtained or (2) a favorable vote by at least 2/3 of the votes cast or consent by at least 2/3 of the owners is insufficient to approve the amendment, then the Board of Directors of the association may petition the Circuit Court of the City or County in which such real estate is located to: (1) reduce the required quorum; (2) reduce the vote or consent required to approve the amendment to the instrument; or (3) otherwise modify the procedures required to amend the instrument. The Court shall require the petitioner to provide reasonable notice to each owner of real estate subject to the instrument.

4. Amend the first sentence of Subsection 55-515.2 F as follows to allow another basis for a corrective amendment:

The declarant may unilaterally execute and record a corrective amendment or supplement to the declaration to correct a mathematical mistake, an inconsistency or a scrivener's error, correct an incorrect name of the association or name the correct association where the declaration erroneously names the incorrect association, or clarify an ambiguity in the declaration with respect to an objectively verifiable fact (including without limitation recalculating the liability for assessments or the number of votes in the association appertaining to a lot), within five years after the recordation of the declaration containing or creating such mistake, inconsistency, error or ambiguity.