

VBA REAL

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A publication of the Real Estate Law Section of
The Virginia Bar Association

BREAKING NEWS: Governor Signs Bill Reversing Game Place Decision; Effective Immediately. See "Legislative Updates" below for details.

VBA REAL - February Edition



Attendees enjoying the CLE program presented by the Real Estate Section at the 129th Annual Meeting of the VBA last month. See "VBA News" to learn more.

Neighbors can be great. From lending you a cup of sugar to hosting a 4th of July cookout, there are endless benefits to having neighbors. On the other hand, neighbors can sometimes be... not so great. Resolving disputes with your neighbors can be emotionally and socially complicated. And, if you live in a community with an owners' association, those disputes can get legally complicated.

The Commonwealth of Virginia has developed a complex and ever-changing statutory framework for creating, operating and living in organized communities, and it often requires some level of specialization to keep up with the law. In the Real Estate Section of the VBA, we have many attorneys who routinely practice in this area and others who dare to dabble. In this issue of VBA REAL, you'll find a legislative update that highlights potential developments in **Common Interest Communities (CIC)** law, a report on the fascinating CLE that our section hosted in Williamsburg last month and a profile of a section member who devotes her practice to CIC law.

CAPTION CONTEST WINNER



"If you ask me, these new commissioners are having a real chilling effect on development."

-Mark Graybeal, Capital One

HONORABLE MENTIONS:

"Maybe you should defer to the July hearing."

"Bob and Susan could really use some Campbell's soup."

See the bottom of this email for this month's Caption Contest.



Communities at Annual Meeting



At the 129th Annual Meeting of the VBA in Williamsburg, the Real Estate Section hosted the second installment of a CLE on Common Interest Communities, continuing the discussion held on the topic a year before. In this year's session, Josh Johnson of Walsh Colucci served as the moderator and shared the stage with Pia Trigiani, a prominent CIC practitioner from MercerTrigiani and former VBA President, and Heather Gillespie, who is the CIC Ombudsman for the Commonwealth of Virginia.

Pia shared a synopsis of the laws that govern CICs in Virginia and Heather detailed her role as ombudsman in resolving disputes between CIC associations and their members. Heather explained that she hears complaints from association members alleging a violation of CIC laws by the association. As Virginia's original and only CIC ombudsman, Heather has rendered dozens of opinions on a variety of matters, including allegations that an association board has met in secret or kept its books improperly or unnecessarily withheld budgetary information from its members. While her opinions are not precedential in nature, they are printed and available to the public to provide guidance for associations, their boards and members.

Josh and Pia also recognized the changing role of owner's associations in localities where basic municipal services are being delegated to Common Interest Communities. While we often think of private roads as the responsibility of CIC associations, more and more frequently CIC associations are also tasked with storm water drainage and maintenance of storm water facilities. The General Assembly is barraged with new legislation each year regarding CIC communities, their obligations, and how they operate, as noted in the Legislative Updates below. As more CICs are developed and more people are living in these kinds of communities, the role of the real estate attorney practicing CIC law becomes all the more vital and relevant.

We hope you will join the Real Estate Section at its next CLE, to be presented at the VBA's [129th Summer Meeting](#) at the Homestead. We'll be analyzing the incentive programs used to lure significant real estate projects to Virginia (e.g., Amazon HQ2) and to restore existing treasures (e.g., the Cavalier Hotel).

Also, we strongly encourage you to check out the [23rd Annual Advanced Real Estate Seminar](#) sponsored by Virginia CLE and the Real Property Section of the Virginia State Bar. It will be held March 1-2 at the Kingsmill Resort in Williamsburg. It's a popular annual event and space is limited!

Legislative Update

Stay Informed

HB 2287 and SB 1422

As noted in last month's **VBA REAL**, these companion bills were a response to the decision in *The Game Place, L.L.C., et al., v. Fredericksburg 35, LLC*, 295 Va. 396, 813 S.E. 2d 312 (Va. 2018). They were approved unanimously by both houses of the General Assembly, and the Governor has signed the House version into law. Because the bill contained an emergency clause, the legislation took effect on February 13, 2019, the date the Governor signed it. The result of this legislation is that a lease of more than five years no longer needs to take the form of a deed in order to be effective. Additionally, any leases entered

into prior to February 13, 2019, will not be deemed deficient simply because they lack the formalities of a deed. The passage of this legislation is a credit to several VBA members who participated in crafting the legislation and helping steer it through the General Assembly, particularly Charlie Menges of McGuireWoods. This success was also made possible by Jeff Palmore of Reed Smith, who serves as the VBA's lobbyist and who helped develop broad support for the legislation across several industry groups.

SB 1080

This bill proposes the creation of a Title 55.1 to replace the existing Title 55 to the Virginia Code (Property and Conveyances). See the last issue of VBA REAL for more details or check out the actual legislation at <https://lis.virginia.gov>. **As of the printing of this issue of VBA REAL, the bill has passed both the Senate and the House Unanimously.**

Common Interest Communities Legislation

New legislation relating to Common Interest Communities is introduced at each session of the General Assembly, and this year is no different. Here is a quick summary of some of the bills relating to Common Interest Communities. Again, more details and up-to-date reports of each bill's progress can be found at <https://lis.virginia.gov>.

HB 1853

Characterizing home-based child care services as a residential use in a CIC unless the association's declaration expressly restricts it otherwise. **Passed both houses unanimously, signed by Governor, takes effect July 1, 2019.**

HB 1901

Requiring an owner's association to provide the final count of a membership-wide vote to any lot owner requesting it. **Tabled in General Laws committee as of January 29, 2019.**

HB 1962

Authorizing the Common Interest Community Board to require condo boards and other governing bodies to come into compliance with certain statutes. **Passed both houses as of February 14, 2019.**

HB 2385

Giving purchasers of lots or units subject to an owner's association or condo association a limited right to cancel the purchase contract if the association disclosure packet or condo resale certificate they receive does not conform with applicable law. **Passed both houses as of February 14, 2019.**

Other bills of note include HB 2030, HB 2081, HB 2418, HB 2647, HB 2694, SB 1086, SB 1538, and SB 1756.

Your Real Estate Section Council is tracking a number of legislative initiatives before the General Assembly in 2019. Additional information about these bills and their status can be found at <https://lis.virginia.gov>. If you would like to become more involved in the Section's review, analysis and promotion of legislation, please send an email to Will Homiller, the incoming Chair of the Section, at will.homiller@troutman.com.

VBA REAL Member Profile

Stuart Landin

- Attorney with MercerTrigiani in Alexandria
- University of Richmond (J.D.), 2011
- Southern Methodist University (B.A.), 2005

How did you get started in
Common Interest Communities
law?

- I got started in Common Interest Community law after the judge for whom I was clerking, the Honorable R. Terrence Ney, suggested that I meet with Pia Trigiani and David Mercer to learn more about their diverse practice area. Common Interest Community law sounded very appealing to me because it would allow me to have continued exposure to different areas of law just as my clerkship had allowed. I was very fortunate that Pia and David had an opening at their firm and were willing to take a chance on me.



What kind of clients do you typically serve?

- We regularly represent homeowners associations and condominium unit owners associations – not individual unit owners (with a few exceptions). These associations administer, govern and operate communities located all over the Commonwealth (and some in D.C.) and range from rural homeowners associations with equestrian centers and golf courses to high rise condominiums located in the heart of the District of Columbia and Old Town, Alexandria. The tricky part about our representation is that we represent the associations, not the board of directors governing a particular association. So, sometimes the advice we give is in the best interest of the client – the association – but may not be what the board wants to hear.

Could you share a funny or interesting “war story” from your practice? Maybe an unexpected conflict or a difficult issue you take pride (or laughter) in helping resolve? Feel free to leave out client-specific details.

- I recently negotiated a stormwater maintenance agreement for one of our clients with the jurisdiction in which the Association is located. The negotiations should have been simple because the recorded Deed of Subdivision for the property already contained easements establishing authority for the jurisdiction to come onto the property and maintain the stormwater pond. But, for some reason, the Director of Public Works and attorney for the jurisdiction did not believe those easements were sufficient and wanted the Association to either convey the stormwater pond to the jurisdiction or to initiate condemnation proceedings. After many long hours we were able to come to an agreement that was acceptable to both parties – especially the Association Board – and the jurisdiction is now responsible for maintain the stormwater pond and the Association still owns the pond and surrounding land.

Tell us about someone who has influenced your career.

- After law school, I had the privilege of clerking for the Honorable R. Terrence Ney in the Fairfax County, Virginia Circuit Court for three years. Judge Ney was smart, thoughtful and driven. He was also passionate about the practice of law. In addition, he was one of the most kind men I have known. He taught me so much about the law in a short period of time – including how to write and draft efficiently and effectively. I think of him often and ask myself how he would respond to a particular client request or address a client issue. He was an avid supporter of the VBA (and past-president) and continually impressed upon me the value of membership.

What do you see as a challenge for lawyers who may want to start a CIC practice or dabble in it from time to time?

- I think one of the main challenges is interpreting the governing documents or condominium instruments for a client and explaining that interpretation in an understandable way to association management and the members of the board. Some of the documents we work with are extremely well drafted and are easy to reference and understand. Others are poorly drafted or poorly amended and contain numerous ambiguities or contradictions. It is important to become familiar with the foundational documents for the community and to take time to carefully read and understand the provisions (and understand how those provisions marry up with applicable statutes and case law).

What do you value about your membership in the VBA?

- I value the educational opportunities and the networking opportunities. I have met wonderful people at the VBA events I have attended and have also enjoyed catching up with old colleagues and friends.

Desert island question: What combination of 5 books or movies would you take?

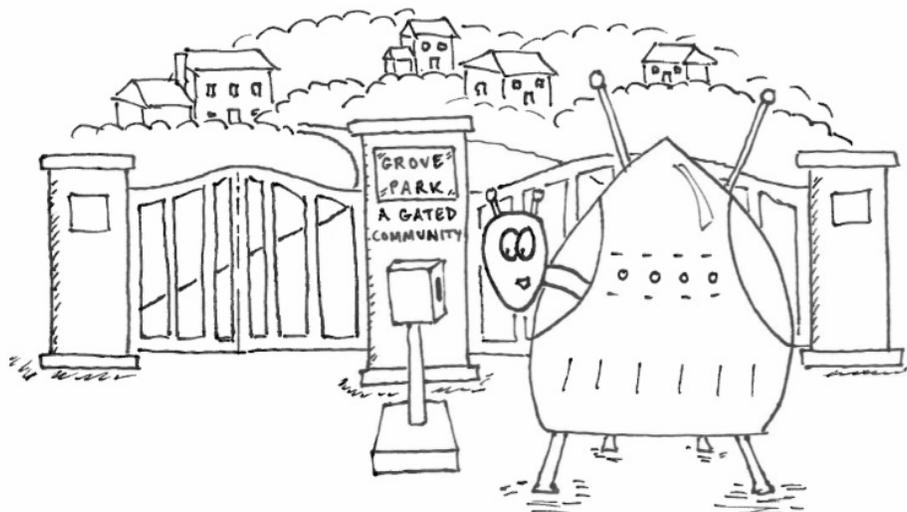
- Books: The Goldfinch, Jane Eyre and Pride and Prejudice. Movies: Something to Talk About and Philadelphia Story

If you were a pilot in the movie Top Gun, what would your call sign be?

- My call sign would be "Papa" after my grandfather who was a P-51 fighter pilot in World War II.

Just for Fun

Caption Contest



SUBMIT YOUR CAPTION!

*Each issue of **VBA REAL** features a picture in need of a caption. Send us your caption and make your colleagues laugh. We'll publish the most amusing captions in the next issue. And remember, even though*

Special Acknowledgement

Maxwell H. Wiegard

At the Winter Meetings last month, the Council of the Real Estate Section had occasion to express its gratitude to Max Wiegard, whose 2-year term as the Chair of the Section ended. The Council unanimously passed the following resolution:

RECOGNIZING MAXWELL H. WIEGARD FOR HIS SERVICE TO THE VBA REAL ESTATE SECTION

WHEREAS, Maxwell H. (Max) Wiegard served the members of the Real Estate Section of the Virginia Bar Association as Secretary-Treasurer in 2013 and 2014, and as Vice-Chair in 2015 and 2016, and as Chair in 2017 and 2018; and

WHEREAS, Max's term as Chair of the Real Estate Section of the Virginia Bar Association is scheduled to end on January 25, 2019; and

WHEREAS, during his Chairmanship, Max has conducted the meetings of the Council of the Real Estate Section with efficiency and purpose and has nurtured an open forum for Council members to voice their opinions and engage fully in the activities of the section; and

WHEREAS, Max is responsible for enhancing the Council's productivity through the establishment of standing committees for Membership, Public Affairs, and Member Services; and

WHEREAS, Max has spearheaded efforts to protect the practice of real estate law in the Commonwealth through advocacy against potentially harmful state legislation, including, without limitation, a proposal to define "settlement agents" in a manner that likely would have resulted in the unauthorized practice of law; and

WHEREAS, Max has kept watch over new initiatives and legislation that will improve the practice of real estate law in the Commonwealth, including, without limitation, the recodification of Title 55 and a correction to the *Game Place* decision; and

WHEREAS, Max has forged strong and lasting ties between the Real Estate Section of the Virginia Bar Association and the Real Property Section of the Virginia State Bar by generating support for each group's activities, encouraging cross-participation by their memberships and fostering cooperation to the benefit of all real estate attorneys in the Commonwealth of Virginia; and

WHEREAS, Max has put countless miles on his car's odometer and spent countless hours on the road in service of our section, as he provided leadership to all of our members from an important but relatively distant region of the Commonwealth; and

WHEREAS, perhaps most impressively, during his tenure as Chair of the Real Estate Section of the Virginia Bar Association, Max assembled the best DAM LAWYERS in the Commonwealth of Virginia in one place and has proved himself to be a fine DAM LAWYER worthy of recognition.

NOW, THEREFORE, BE IT RESOLVED that the Council of the Real Estate Section of the Virginia Bar Association, this 25th day of January 2019, publicly recognizes Maxwell H. Wiegard and extends, on behalf of the membership of the section, **appreciation** for his service, **congratulations** on the completion of his term as Chair, and **best wishes** for continued success and involvement with the VBA.

AND, BE IT FURTHER RESOLVED that a copy of this resolution be presented to Max and

that this resolution be permanently recorded among the papers of this Council.

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