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How Simple Registration Is – And How Important the Impact?

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On an annual basis Maryland and Virginia condominiums and homeowners associations are inundated with requests from the State for updating registrations and registration fees. You may ask and often do ask at the budget crunch time “why do we have to pay these fees?” and “why do we have to register?”

The answer is very simple. Registration protects the associations in a multitude of ways. Simply by registering your association either with the appropriate Real Estate Board in your jurisdiction, or if you are a corporation, registering with your State Corporation Commission (VA) or Secretary of State (MD), you are placing all prospective purchasers on notice that there is a homeowners or condominium association and that your association must be dealt with as part of the sale transaction.

Condominium Registration

Condominium registration is imperative because at common law, a condominium could not have existed because it wasn't “land”. Under the statutory schemes in both Maryland and Virginia, registration is required. Taking each jurisdiction

separately, the following registration requirements exist:

✍ **Maryland** – Maryland requires the initial condominium to be registered with the Secretary of the State through the filing of a public offering statement. In addition, condominiums in Maryland can either be incorporated or unincorporated. An incorporated Maryland condominium protects the directors and provides prospective purchasers and their agents a place to search for current contact information. This can be crucial when resales of units occur.

✍ **Virginia** – Condominiums in Virginia are required to register with the Virginia Real Estate Board. The unit owners association is required to file a report each year commencing on the termination of declarant control of the condominium. That annual report lists contact information for the association. This becomes critical when units are up for resale. Under recent changes to the Virginia Condominium Act, a local realtor attempting to sell a condominium unit often accesses the Real Estate Board registration records to determine the contact party for the

condominium association, since many unit owners apparently do not provide that information to their sales agents. If your association is not registered, prospective purchasers may not be informed about the association, its particular rules (no pets, rental restrictions, etc.) until after the sale, usually leading to problems in the future for the Association's Board of Directors or Trustees.

Homeowners Associations Registration

Homeowners associations are somewhat different: they are required, if incorporated, to maintain their corporate status with each state's registering authority. Other registration requirements vary by state.

✍ **Maryland** – Incorporated associations are required to maintain their corporate status with the Maryland Department of Taxation. In addition, Maryland homeowners associations are required to maintain current association documents with the Homeowners Association Depository in the Office of the Clerk of the Court in the county in which the association is present. Homeowners Associations are also required to provide the depository with any applicable disclosures and failure to deposit those disclosures with the depository may render the disclosures unenforceable until such time as they are deposited.

If you have any questions regarding what disclosures are required to be deposited, please contact any of our Maryland community association attorneys.

✍ **Virginia** – For Virginia associations, it is critical that they be registered either with the Real Estate Board or with the Virginia State Corporation Commission. If a Virginia homeowners association fails to register with either of these entities, the association disclosure package required by statute as part of a resale transaction would be deemed “not available”, and a prospective purchaser would not be required to abide by information routinely disclosed in a disclosure package such as current covenant violations on a lot, or any pending rule or architectural violation.

In addition, registration at both the Virginia State Corporation Commission and the Real Estate Board provides ready information online to a prospective purchaser concerning contacts within the association.

In conclusion, for a small nominal fee both Maryland and Virginia associations can register with their respective corporate and real estate regulatory entities and ensure that prospective purchasers are getting the correct and current information about the association. In the long run this makes a Board's job easier, as their new members are informed about the particulars of your association. We typically advocate dual registration to ensure that all registrations and contact information is current.

If you have any questions about whether your association is registered or would like to ensure that your association is registered with the appropriate regulatory entity, please do not hesitate to contact any of our community association attorneys.