



YOU AND THE LAW

A public awareness program designed to educate the public about the legal system in order to make citizens' interaction with the system more efficient and less frustrating

March 10, 2010

Things You Need to Know About the Court System

The Hon. William D. Broadhurst
The Hon. Jacqueline Ward Talevi
Mark E. Feldmann, Esq.

March 17, 2010

Ten things You Need to Know About Civil Litigation

Michael S. Whitlow, Esq.

Ten Things You Need to Know About Arbitration, Collaboration, Mediation, and Litigation

K. Brett Marston, Esq.

March 24, 2010

Ten Things You Need to Know About Bankruptcy

Roy V. Creasy, Esq.

Ten Things You Need to Know About Real Estate

David B. Bullington, Esq.

March 31, 2010

Ten Things You Need to Know About Traffic and Criminal Courts

Raphael E. Ferris, Esq.

Ten Things You Need to Know About Elder Law

V. Anne Edenfield, Esq.

Roanoke Higher Education Center, Room 212

7:00 p.m. - 8:30 p.m.

Registration is required and reservations for each seminar are accepted beginning the Thursday prior to the seminar - Call 265-8111 for reservations

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Things You Need to Know About the Court System

Mark E. Feldmann, Esq.

- I. Dual Federal/State Court Systems
 - A. Federal Courts
 1. Art. III - U.S. Constitution
 - (a) Vests judicial power in Supreme Court and "inferior courts as Congress" may establish
 - (b) Federal question and diversity jurisdiction
 2. Courts
 - (a) Supreme Court
 - (b) Circuit Courts of Appeal
 - (c) District Courts
 - (d) Specialized courts
 - Bankruptcy courts
 - Tax court
 - U.S. claims court
 - B. Virginia Courts
 1. Art. VI - VA Constitution (1971)
 - (a) Vests judicial power in Supreme Court of V A. and such "other courts as General Assembly" may establish
 - (b) General original/appellate jurisdiction
 2. Courts
 - (a) Supreme Court of V A.
 - (b) Court of Appeals
 - (c) Circuit Courts
 - (d) Gen. District Courts
 - (e) Juvenile & Dom. Relations Courts
- II. Jurisdiction/Civil Procedure - Virginia Courts
 - A. Supreme Court
 1. Seven justices elected by majority of each house of GA for 12 yr. terms
 2. Original jurisdiction - habeas corpus, mandamus, prohibition, judicial removal, and questions of state law certified by U.S. and other state appellate courts
 3. Appellate jurisdiction - decisions of Ct of Appeals, circuit courts, SCC
 4. Procedure
 - (a) Petition for appeal
 - (b) Written/oral arguments
 - (c) Written opinion
 - B. Court of Appeals (1985)
 1. Eleven judges elected by majority of each house of GA for 8 yr. terms
 2. Original jurisdiction - injunctions, mandamus, prohibition and habeas corpus in cases over which CA has appellate jurisdiction
 3. Appellate jurisdiction
 - (a) appeal of right - from final decision of Circuit Court on appeal from decision of administrative agency
 - final decisions of WCC
 - final judgment of circuit court in domestic
 - (b) Discretionary - from decisions of Circuit Court in traffic and criminal [EXCEPT death penalty cases, final decisions of SCC, and lawyer/judicial disciplinary cases]
 4. Procedure - same as Supreme Court

C. Circuit Courts

1. One in each city / county and divided into 31 judicial circuits
2. Original jurisdiction - general jurisdiction over criminal and civil cases
 - (a) criminal- felonies
 - (b) civil- personal injury & property damage above \$4500
 - business/contract disputes
 - domestic relations
 - real estate
 - will contests
 - Va. Tort Claims Act
3. Appellate Jurisdiction
 - (a) Decision of GDC with trial de novo in both criminal and civil
 - (b) Quasi judicial actions of clerk
4. Procedure - civil
 - (a) Pleadings - complaint/answer
 - (b) Motions - demurrer, S/L, and MSJ
 - (c) Discovery - written and depositions
 - (d) Trial - judge or jury
 - (1) Opening statement
 - (2) Evidence
 - (3) Closing argument
 - (4) Verdict
 - (5) Post-trial motions
 - (6) Judgment

D. GDC

1. One in each city / county and divided into 31 circuits
2. Original jurisdiction
 - (a) criminal- misdemeanors and traffic offenses
 - (b) civil- exclusive up to \$4,500 and concurrent with circuit between \$4,501-\$15,000
 - warrant in debt
 - unlawful detainer
 - attachment
3. Procedure - civil
 - (a) Small claims division or court - up to \$5,000
 - (b) Pleadings
 - warrant in debt
 - bill of particulars
 - grounds of defense
 - (c) Trial - judge

E. J&DR Court

1. One in each city / county and divided into 31 circuits
2. Exclusive original jurisdiction
 - custody, visitation, support, etc. for children
 - traffic offenses by children
 - admission of minors for mental health treatment
 - judicial consent for child activities, medical tx
 - probable cause hearings for felonies
3. Concurrent jurisdiction with circuit courts
 - custody, visitation and support of children incidental to case pending in circuit court

**Ten Things You Need to Know About
Arbitration, Collaboration, Mediation and Litigation
K. Brett Marston, Esq.**

1. **Arbitration is Not Mediation, and Mediation is Not Arbitration.** This seems like a simple point, but they are often confused. Arbitration involves a neutral party (or more than one) hearing the evidence in a case and rendering a decision. Mediation involves a neutral party facilitating settlement discussions, but does not involve the neutral party making the decision for the parties.

2. **Arbitration Provisions Lurk in Many of the Contracts You Sign.** Though many consumers are not aware of it, provisions requiring the arbitration of disputes are included in many agreements that consumers encounter. Many of these require arbitration through professional dispute-resolution organizations such as the American Arbitration Association (AAA). The parties can always opt, however, by agreement to obtain an arbitrator that is not part of that organization's bank of arbitrators.

3. **Parties to a Dispute Can Agree to Use Arbitration and/or Mediation At Most Any Time, Even if Their Case is Proceeding in a Court.** The law and judges normally encourage alternative dispute resolution. Courts will honor agreements the parties make to arbitrate, and even encourage parties to engage in mediation or "settlement conferences." Mediation can be used at almost anytime in a dispute from very early on before it is a court case, even up to after a decision has been rendered.

4. **Arbitration Does Not Always Result in a "Split the Baby" Decision.** This misimpression stems all the way back to King Solomon. Though arbitrators may be less likely, due to procedural aspects of arbitration, to "kick out" a case, they do not necessarily just pick a number in the middle and rule on that basis.

5. **Arbitration Generally Has More Relaxed Standards of Evidence and Process, but is Not "Anything Goes."** As opposed to a trial in court, arbitrators often allow a more informal procedural and evidentiary process. There are, however, limits to what will be heard, and how the process will operate.

6. **Mediation Provides Options for Resolution that are Not Present in Trial or (Usually) Arbitration.** In court, the outcome in a civil matter is normally based upon whether the defendant owes any money to the plaintiff and, if so, how much. In mediation, the process allows the parties to craft options that may (or may not) involve just the payment of money.

7. **Mediation Can Be an Expensive Process, But it Does Not Have to Be.** Some cases call for the use of relatively expensive mediators to assist in resolution. Almost any case can benefit from mediation, and the courts are equipped to point parties to relatively low-cost mediation services available through the courts or community organizations.

Ten Things You Need to Know About Real Estate and Buying A Home

David B. Bullington, Esq.

1. Buyer Beware. The seller makes no representations or warranties regarding the condition of the home or property in the sale of an existing home. The importance of having a home inspection.
2. Buyer Beware. The seller makes no representations regarding adjoining properties, zoning, or suitability for an intended purposes. Things the buyer may want to investigate.
3. The Residential Property Disclaimer Form. The seller must provide this form to the buyer prior to acceptance of the purchase contract in most sales of existing homes under Virginia law. If this form is not given prior to acceptance of the contract, the buyer has the right to terminate the contract for a limited period of time.
4. Property Owner Association Disclosure Packet. Virginia law requires the seller to provide the buyer a disclosure packet when the property is located in a neighborhood with a property owner's association and assessments. The buyer has the right by law to terminate the contract for a limited time after receipt of the disclosure packet.
5. The Common Interest Community Board and Ombudsman. A new board an ombudsman position has been established by Virginia law to regulate property owner's associations in Virginia. A potential resource for property owners with questions and complaints about their property owner's associations.
6. New Home Warranties. Warranties are imposed by state law in the sale of new homes unless properly disclaimed in your contract.
7. Owner's Title Insurance. What it is and how it protects your ownership interest in real property.
8. Surveys and Encroachments. Why you want a survey to find out what easements and encroachments exist when buying property.
9. Real Estate Contracts. They are binding. Rights and remedies of seller and buyer if the contract is breached.
10. Real Estate Closings. How the process works and what to expect. What happens when the closing date is delayed.

Notes: _____

Common Interest Community Board



Office of the Common Interest Community Ombudsman

The 2008 General Assembly enacted, and the Governor signed, legislation creating the **Common Interest Community Board** and the **Office of the Common Interest Community Ombudsman** at the Department of Professional and Occupational Regulation (DPOR).

The new law (<http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0851>) is effective July 1, 2008, and DPOR is working on the necessary staffing, regulatory and programmatic elements required to implement its provisions as quickly as possible.

Although starting a new regulatory program takes time, we understand many Virginians have questions about the new Board and Ombudsman. We hope the following information is helpful in learning about the new law and what to expect.

Please continue to check the DPOR website (www.dpor.virginia.gov) for progress updates, including anticipated timeframes for emergency regulations, provisional licenses, and complaint processing.

What does the new law mean for Associations?

- Common interest communities subject to the new law include Property Owners' Associations, Condominium Associations, and Cooperative Associations. If your community has a governing body, collects mandatory assessments, and maintains common areas (such as a lake or playground), it likely falls under the new law.
- In addition to the existing annual report requirement and fee, Associations must pay an annual assessment of 0.02 percent of their annual gross assessment income, plus a one-time \$25 assessment to finance the Recovery Fund.
- Property Owners' Associations and Condominium Associations must obtain a blanket fidelity bond/employee dishonesty insurance policy (minimum coverage of \$10,000; \$1 million maximum).

- Associations must provide documents and records to the Ombudsman upon request, in order to assist members with using the complaint process.
- Associations must establish reasonable procedures for resolution of written complaints, including:
 - Maintaining records of each complaint for at least one year after acting on complaint;
 - Providing complaint forms/written procedures to individuals wishing to file written complaints; and
 - Informing Association members of their right to file a Notice of Adverse Decision with the Ombudsman.

<h3>What is the Common Interest Community Board and what will it do?</h3>

- Common Interest Community (CIC) Board is composed of 11 members appointed by the Governor:
 - 3 CIC Managers;
 - 1 attorney who represents Associations;
 - 1 Certified Public Accountant (CPA) who provides services to Associations;
 - 1 timeshare industry representative;
 - 2 developers of Associations; and
 - 3 citizens (one who serves on Association governing body and two Association residents).
- CIC Board promulgates regulations, in accordance with Administrative Process Act, to:
 - Establish fees, procedures and qualifications for licensure;
 - Establish educational and training criteria for licensure and certification; and
 - Establish standards of conduct for licensees.
- CIC Board may not intervene in the internal activities of Associations, unless necessary to prevent or remedy violations of regulatory requirements or statutes.
- CIC Board is authorized to bring suit and intervene in court actions where it appears an Association or Manager has violated Board regulations or statutes governing common interest communities (Property Owners' Association Act, Condominium Act, Cooperative Act, or Timeshare Act). CIC Board also may issue cease-and-desist orders against Association governing bodies.
- CIC Board may impose a monetary penalty of up to \$1,000 per violation against any person or firm – licensed or unlicensed – who violates its statutes or regulations. Before issuing any monetary penalty, the CIC Board must grant the person or firm the opportunity for a hearing pursuant to the Administrative Process Act.
- CIC Board enforces its own statutes and regulations, except in the case of real estate licensees who also are licensed as CIC Managers. The Virginia Real Estate Board will retain enforcement jurisdiction over licensed real estate brokers/salespersons who are simultaneously licensed as CIC Managers.
- CIC Board promotes research on CIC topics and supports seminars and educational programs designed to improve understanding about Associations.

What will the Ombudsman do?

- Assist individuals in understanding and exercising their rights in resolving issues with their Associations.
- Receive complaints – Notices of Adverse Decision – from individuals who allege an Association governing body violated legal requirements (statutes, regulations, or Association governing documents). Notices must be filed within 30 days of the final adverse decision, must be submitted in writing on Board forms, must include supporting documentation, and must include a \$25 filing fee (CIC Board may waive for demonstrated hardship).
- Maintain data on inquiries, requests for assistance, complaint notices, and resolution of disputes.
- Issue non-binding explanations of laws and regulations governing Associations. In addition, DPOR Director may determine whether an Association's final adverse decision complies or conflicts with legal requirements – such Director's determination is final but non-binding.
- Offer referrals to alternative dispute resolution services.

Who needs to be licensed and what is required?

- The new law provides for three levels of regulation for Association management services:
 - Licensure for firms (CIC Managers) – whether corporations, partners or sole proprietors – providing “management services” to a common interest community.
 - *Mandatory* certification for the managing or supervisory employees of licensed firms who are involved in direct management services.
 - *Voluntary* certification as an option for non-supervisory employees who are not otherwise required by law to hold an individual license.
- As of January 1, 2009, any firm –corporation, partner or sole proprietor – providing “management services” to an Association must hold a license issued by the CIC Board. Management services include acting on behalf of an Association in its business, legal, or financial transactions; exercising control over Association money or property; and conducting Association meetings (see § 54.1-2345).
- As of July 1, 2011, every individual management or supervisory employee of a licensed CIC Manager -- who is involved in direct management services – must hold a mandatory certification issued by the CIC Board (within two years after employment).
- Individuals exempt from the licensure requirements include: uncompensated members of Association governing bodies, court-ordered receivers, attorneys, and CPAs providing certain services to Associations, time-share associations and agents, and certain real estate licensees (see § 54.1-2347).

- Provisional CIC Manager licenses will be issued to existing managers who apply for licensure by December 31, 2008. Provisional licenses expire on June 30, 2011 and will not be renewed.
 - **NOTE:** The application process for provisional CIC Manager licenses will begin once the CIC Board adopts emergency regulations, sometime this fall.
- Licensed CIC Managers must pay an annual assessment of 0.02 percent of their annual gross receipts, plus a one-time \$25 initial assessment to finance the Recovery Fund.
- Licensed CIC Managers must obtain a blanket fidelity bond/employee dishonesty insurance policy (minimum coverage of \$10,000; \$2 million maximum).
- Licensed CIC Managers must establish a code of conduct to protect against conflicts of interest; must use written contracts with Associations; must establish internal accounting controls; and must use a CPA to review/audit financial statements annually.
- Licensed CIC Managers must maintain separate fiduciary trust accounts for Association funds.

What is a Receiver? What is the Recovery Fund?

- CIC Board may petition the court to appoint a receiver if a CIC Manager appears unable to discharge its fiduciary responsibilities to an Association. Court-appointed receiver may take action to protect Association interests, including exercising control of all bank accounts. CIC Board also may petition court for an injunction to prohibit CIC Manager from withdrawing association monies or disposing of association assets.
- The Common Interest Community Management Recovery Fund is a trust fund used to pay court-appointed receivers and to restore Association monies in the event a CIC Manager fails to discharge its fiduciary responsibilities.
- The Recovery Fund is financed by \$25 from each licensed CIC Manager upon initial licensure, plus \$25 paid once from Associations. The law requires a minimum Fund balance of \$150,000 by July 1, 2011. If necessary to meet the minimum balance requirements, the CIC Board may impose special assessments on each Association and licensed CIC Manager.



Common Interest Community Board
VIRGINIA PROPERTY OWNERS' ASSOCIATION DISCLOSURE PACKET NOTICE

The lot being purchased is in a development subject to the Virginia Property Owners' Association Act. The contract to purchase a lot shall disclose that the lot is located in a property owners' association. The purchaser may have the right to cancel the contract after receiving the disclosure packet and the purchaser may request an update of the disclosure packet pursuant to § 55.509.4 of the Code of Virginia.

Living in a common interest community carries with it certain rights, responsibilities and benefits. Benefits include the right to use common areas, which may include swimming pools, parks, playgrounds and other recreational facilities. In order to finance the operation of the common interest community association, each owner is responsible for and obligated to pay periodic assessments, and if necessary, special assessments to ensure that the financial requirements are met.

Use of common areas, financial obligations of lot owners and other rights, responsibilities and benefits associated with the ownership of a lot in this common interest community are subject to the provisions of governing documents that typically include a declaration, articles of incorporation, bylaws and rules and regulations. These documents are important and should be reviewed carefully prior to purchase.

Some decisions are made by the association board of directors, while other decisions are reserved to a vote of association members. The purchaser is bound by all decisions of the association and the board of directors and the provisions of the governing documents.

Failure to comply with the association governing documents can result in legal action taken against the lot owner. Failure to pay assessments and mandatory fees may result in the association filing a lien and/or lawsuit against the lot owner, foreclosing the lien, and other actions permitted by the governing documents and the Property Owners' Association Act.

Documents and information contained in the disclosure packet describe the basis for living in a common interest community and should be reviewed carefully prior to purchase of the property [lot].

The Association Disclosure Packet must include the following statements:

- Association name, and if incorporated, the state of incorporation and the name and address of the registered agent;
- A statement of any approved expenditures that require an additional assessment during the current year or the immediately succeeding fiscal year;
- A statement of all assessments and other mandatory fees currently imposed by the association;
- A statement whether there is any other entity or facility to which the lot owner may be liable for fees or charges;
- The current reserve study report (or a summary thereof), a statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the governing board for a specified project;
- A copy of the association's current budget (or a summary thereof) and a copy of its statement of income and expenses or financial condition for the last fiscal year available, including a statement of the balance due of any outstanding loans of the association;
- A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that relates to the lot being purchased;
- A statement setting forth the insurance coverage provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
- A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in this disclosure notice;
- A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;
- A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;
- Certification, if applicable, that the association has filed with the Common Interest Community Board the annual report required by §55-516.1 of the Code of Virginia including the filing number assigned by the Common Interest Community Board and the expiration date of the filing.

The Association Disclosure Packet must include the following attachments, if any:

- A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;
- A copy of notice given to the lot owner by the association of any current or pending rule or architectural violation;
- A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet;

RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

NOTICE TO SELLER AND PURCHASER

The Virginia Residential Property Disclosure Act (§ 55-517 et seq. of the Code of Virginia) requires the owner of certain residential real property, whenever the property is to be sold or leased with an option to buy, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT stating the owner makes the following representations as to the real property. Certain transfers of residential property are excluded from this requirement (see § 55-518).

Property Address/

Legal Description: _____

The undersigned owner(s) of the real property described above makes no representations or warranties as to the condition of the real property or any improvements thereon, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary including obtaining a certified home inspection, as defined in § 54.1-500, in accordance with the terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.

The undersigned owner(s) makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.

The undersigned owner(s) makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property, and the purchaser(s) is advised to exercise whatever due diligence the purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.

The undersigned owner(s) makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) adopted by the locality where the property is located pursuant to § 10.1-2109, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.

The undersigned owner(s) makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

The undersigned owner(s) makes no representations with respect to whether the property is within a dam break inundation zone and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones.

The undersigned owner(s) makes no representations with respect to the presence of any stormwater detention facilities located on the property and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary to determine the presence of any stormwater detention facilities on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

The undersigned owner(s) represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, and sanitary living conditions of the real property described above of which the owner has been notified in writing by the locality, nor any pending violation of the local zoning ordinance which the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as disclosed on this statement.

Additional Written Disclosure Requirements

Section 55-518.B. contains other disclosure requirements for transfers involving the first sale of a dwelling because the first sale of a dwelling is exempt from the disclosure requirements listed above. The builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code.

In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the property or (ii) the presence of abandoned mines, shafts, or pits, if any.

The disclosures required by this subsection shall be made by a builder or owner (i) when selling a completed dwelling, before acceptance of the purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on this disclosure form. If no defects are known by the builder to exist, no written disclosure is required by this subsection.

Section 55-519.1 contains a disclosure requirement for properties located in any locality in which there is a military air installation.

Section 32.1-164.1:1 contains a disclosure requirement regarding the validity of septic system operating permits.

See also the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia Cooperative Act (§ 55-424 et seq.) and the Virginia Property Owners' Association Act (§ 55-508 et seq.).

The owner(s) acknowledge having carefully examined this statement and further acknowledge that they have been informed of their rights and obligations under the Virginia Residential Property Disclosure Act.

Owner Date _____
Owner Date

The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have been informed of their rights and obligations under the Virginia Residential Property Disclosure Act.

Purchaser Date _____
Purchaser Date

DPOR 7/09

Ten Things You Need to Know About Elder Law

V. Anne Edenfield, Esq.

1. **Plan ahead and for the unexpected; it can save you and your family money and conflict. Have an attorney prepare your power of attorney (POA), will, and medical directive. You should not prepare them yourself using an online or office supply form, because they are not forms.** Without a power of attorney your family may have to go to court if you become unable to handle your affairs and have a guardian and conservator appointed for you at much greater legal expense than the cost of preparing a power of attorney and the Court may not appoint the person you would choose. Without a Will, especially in a second marriage with unrelated children, there is a greater probability of disputes over your estate, your wishes not being honored, and again unnecessary legal expenses.

2 **Medicare and Medicaid are very different programs, but most people confuse and misunderstand them.** Medicare has no financial requirements for eligibility and it does not pay for long term care. Medicaid has both income and resource requirements for eligibility but does pay for long term care. Neither pays for assisted living.

3. **Do not make gifts of money or your home to your children In order to qualify for Medicaid. There are very strict penalties if you make gifts within five years of applying for Medicaid. Without making gifts, there are many ways to protect many of your assets, Including your home.** The rules for Medicaid are different for singles and married people; and the rules are complicated and constantly changing. Don't rely on what your friends and family tell you. There are many myths about Medicaid. Seek the advice of an Elder Law Attorney.

4. **There are ways you can protect the benefits of a disabled spouse or disabled child in a will without omitting them as beneficiaries.** The use of a special needs trust as part of a Will or as a separate trust is safer and preferable to omitting these family members as beneficiaries in your Will, especially when one spouse is in a nursing home and receiving Medicaid. To maximize this type of planning both spouses should have a Power of Attorney containing certain language, which is why a Power of Attorney is not a form.

5. **Veterans benefits may be available to a veteran or spouse even without a service related disability.**

6. **Having an advance health care directive Is much more useful if you discuss your wishes in advance with your designated agents and your family.**

7. **When preparing for a long term care facility admission, read everything, don't sign the admission agreement as the responsible party if you aren't the patient, refuse arbitration agreements, and be aware you have rights about discharge and transfer, including rights to appeal.**

8. **Know about how to protect yourself against financial exploitation and what fiduciary abuse is. There are legal ways you or your family can get information about what your fiduciary/agent is doing on your behalf. When and how should adult protective services be called?**

9. **Miscellaneous probate issues**

10. **There are community resources available for elder law issues.**

**Criminal and Traffic Defense
General District Court
Raphael E. Ferris, Esq.**

I. Jurisdiction

- A. Infractions — traffic
- B. Misdemeanors
- C. Felonies

II. How is the case brought?

- A. Summons
- B. Warrant

III. What to Plead?

- A. Not Guilty
- B. No contest
- C. Guilty

IV. How does the case proceed?

- A. Commonwealth
- B. Defense
- C. Rebuttal by the Commonwealth

V. Do you need a lawyer?

- A. When is a court appointed lawyer assigned?

VI. Witnesses

VII. Who is actually bringing the charges?

VIII. Can a party “drop” the charges?

IX. Who can I talk to about my case?

X. The Officer did not advise me of my rights. What happens now?

