

# TARLEY ROBINSON

ATTORNEYS & COUNSELLORS AT LAW

Williamsburg, Virginia | Est. 1992

1313 Jamestown Road  
Williamsburg, VA 23185

Phone: 757.229.4281  
Fax: 757.229.7439



## Ban on kids playing = housing discrimination lawsuit against condominium association

Boards of Directors are empowered by statute in Virginia and often times by the governing documents of the community association to enact rules and regulations concerning common areas, common elements, recreational facilities or other areas of association responsibility. In certain instances a Board of Directors may want to enact a rule to address the activities of children – limiting their pool time, forbidding children under a certain age from using recreational facilities or prohibiting certain activities on common areas or elements. Be careful, the rule you enact may violate the federal and state Fair Housing Act.

The Commonwealth of Virginia's Fair Housing Board filed a housing discrimination lawsuit against Cedarwood Condominium Association, a Chesapeake condominium association. According to the Complaint filed, the association had a "Group Sports Activity" rule that banned organized sports activities in the common areas without approval of the board. Concerns were raised whether this rule banned activities such as a passing a football.

After an 18-month examination of the rule, the board banned any activity that included tossing a ball, arrow, dart or Frisbee in the common area. Families began receiving notice of a violation and the required \$50 fine. Apparently, these families complained to the Fair Housing Board which conducted an investigation. The Fair Housing Board alleged that the association violated the Virginia Code prohibiting housing discrimination based upon familial status. The Fair Housing Board filed the lawsuit after efforts to settle the issue failed through mediation.

Not all rules regarding children are discriminatory per se. Have your experienced association attorney review the rules for your association, especially if you have rules that only address the behaviors of children in the neighborhood, or limit their use of the common areas, common elements or recreational facilities.

## Make sure you are protected against liability when serving on a volunteer Board of Directors

We frequently are asked whether volunteer board members can be civilly liable for actions taken while a board member. This issue is of serious concern because lawsuits tend to be over inclusive, naming every possible defendant in the initial complaint. Why sign up as a volunteer board member if it could bankrupt you?

The good news is that your liability as a board member of an incorporated or unincorporated community association is limited by statute. Va. Code Ann. §§ 13.1-870.1 and 13.1-870.2 state that you are not liable for damages in a lawsuit brought against you as an officer or director if you do not receive any compensation for your services.

Although you may not be liable for damages, these statutes do not make you immune to a lawsuit. You can still be sued because, as we say, "anybody can be sued by anybody for anything at any time." In that case, you will want to know who will pay or reimburse you for your attorneys' fees.

Again, there is good news here, also, but it is important to know a) whether your organization has a directors' and officers' insurance policy (known as D&O coverage) to cover your attorneys' fees in defending a lawsuit and b) whether your governing documents indemnify you for any expenses you incur in such a lawsuit. Most indemnification provisions for directors and officers will be found in the corporation's articles of incorporation or bylaws.

There is also statutory indemnification. Va. Code Ann § 13.1-876 does not require a corporation to indemnify you but it does permit a corporation to indemnify a director against liability incurred in the proceeding.

There is also mandatory indemnification provided by statute in Virginia. Va. Code Ann. § 13.1-877 requires a corporation to indemnify a director who entirely prevails in defending a proceeding where he is a party because he is or was a director of the corporation, unless the articles of incorporation provide otherwise.

It is important to know whether you are protected from the expenses of a lawsuit when you volunteer to serve as a director or officer of a community association. Have your association attorney review the D&O insurance policy. The attorney can also review the articles of incorporation and bylaws to determine whether the association is obligated to pay or reimburse you for any expenses incurred in a lawsuit. Your volunteer service as a board member should not cause you financial ruin, so make sure you are protected.

## November Seminar

Susan B. Tarley will be one of the presenters for *Collections, Bankruptcies and Foreclosures, Oh My!* sponsored by the Central Virginia Chapter of CAI. Join us on November 10, 2010. 11:30 a.m. registration. Noon presentation with lunch. Location: 3901 Westerre Parkway, Ste. 100, Richmond, VA. Call Kim Lowery at 757.229.4281 if you would like to attend.

Check out our blog at  
[www.blog.tarleyrobinson.com](http://www.blog.tarleyrobinson.com)