

POAVA Seminar ([www.poava.org](http://www.poava.org)) Mar. 22, 2008  
At Hampton Inn, Winchester, VA

***Disclaimer:** These are my personal notes from the seminar. This should not be considered a complete or authoritative document.*

POAVA Spring Meeting - new legislation (HB-516). POAVA is moving from DPOR to new agency - CIC Board. POA renewal fee now based on size of the association. If POA is not registered, their disclosure packet can be deemed unavailable. Registration number and expiration date needs to be included in disclosure statement. Check expiration date on certificate, who, when, where, is renewal sent.

**Reserve Fund Study** – How to do an in-house reserve fund study. Why do a study?

- 1 – required by VPOA Act
- 2 – good business practice
- 3 – some documents may require it

VPOA Act requires reserve fund study to be done every 5 years. Also – Board reviews reserve fund study every year and makes adjustments if needed. Summary of reserve fund study is part of disclosure package.

How to do a reserve fund study:

- 1 – What do we have? Inventory **everything**
- 2 – Tap free knowledgeable resources for replacement estimates.
- 3 – **Don't worry about inflation** as the study is reviewed every year. Do everything in terms of today's dollars. Figure replacement cost to replace item **in today's dollars** – divided by the amount of years for replacement life.

**Educate the membership.**

Reserve Fund & Study is for replacement and maintenance for items POA owns today. Capital Improvement Funds are for future purchases. Legal reserve fund is O.K.

Reserve funds are for major maintenance items. Also need a maintenance plan to be reviewed every year or 2 years.

Statute says **study** is mandatory, not the funding of it.

**THE BOARD WORKS FOR THE MEMBERSHIP!!!**

**Disclosure Packet** - All Board correspondence with members should also inform owners of disclosure law. Board should be proactive in this, including

it in newsletters, invoices, announcements, website, etc. So that every owner is always made aware of it.

A foreclosure sale is exempt from disclosure law.

**Taxes** – All POA's are considered to be corporations for tax purposes, whether they are actually incorporated or not. There are 3 ways a POA can file its taxes.

- 1 – file as a 501-C4 non profit.
- 2 – file an 1120 under section 277
- 3 – file an 1120-H under section 528

Under 501-C4 non profit you don't pay taxes, but you have to open up the property to everyone. Need to be willing to let anyone in to the facilities. Have to have approval from IRS to file as 501-C4.

Other 2 most common ways to file are section 277 and section 528.

Section 277 – good for POA's with less than \$300k in income. Under this section there is a membership Income/Expense reporting and a non-membership Income/Expense reporting. Separate operations with profit and loss on each side. Non-member income is considered 3<sup>rd</sup> party income.

Section 528 – Says all assessments for maintenance of association activity can be excluded. Drawback is if owner decided to rent a facility – tax for this is income is 30%.

Use 1120H if no taxes. Use 1120 if there are taxes as the rate is lower.

**Audits** – CPA's issue 3 types of reports

- 1) Compilation - in GAAP format of information given to them. Not advised
- 2) Review – auditor asks questions , makes statement, etc., ie: noting came to our attention. Not advised
- 3) Audit – only one advised. Based on financial statement provided to auditor. **Uses budget and minutes.** Major decisions must be traceable to financial statements.

**One person doing all the bookkeeping is a material weakness!**

Should never have only one person writing checks, doing financial reports, accessing bank accounts, etc. Committee members are elected every year.

The Board is the client in an audit. Board members must remember they are fiduciaries to the owners. If Board members divert \$\$ there may be personal liability. An audit **MUST** be done by an independent outside resource.

[An Association attorney represents the Association, not the Board. Council has direct contact with the Board of Directors. The Attorney client relationship is only with the Board of Directors.]

Relief in assessment (ie: reduction in exchange for services) equals taxable income to the person receiving the relief (1099).

An audit is not an investigation. If any errors, they would not be sufficient enough to cause a reasonably prudent person from making a different decision.

Portion of assessment that is for capital resources can be added to owners basis.

For your own protection and peace of mind, you should have an audit done. The cost is minimal in terms of the downside. It provides protection for the community, Board, and officers. Cost could be minimum of \$1200.

### **Documents –**

Based on VPOA Act and decisions by VA Supreme Court – the following are requirements to be considered a POA under the Act.

**1 – Mandatory membership in the Association**

**2 – Association has a duty to maintain the common area**

**3 – Association has the power and authority to collect assessments**

These three items must be **clearly stated and recorded** in the declaration deed on file with the county.

If a POA does not come under the Act, all liens that have been filed need to be thrown out.

Article and Bylaws are not the same as the Deed of Declaration.

Need to go back to **original documents** - deed of dedication, subdivision plat, easements, etc.

### **POA Court decisions –**

**Pond v Bryant** – In Nelson County, about 2 years ago. Pond owned 2 adjoining lots, 16 and 17. Couldn't build on one lot without using the other lot for septic. Went to county and got permission to replat 2 lots into one - 16A - so they could build. Pond then went to membership and asked to have assessment reduced as they now only owned 1 lot. Membership voted that was OK. Two years later a new Board looked at the matter and decided that for purposes of assessment, the Ponds still owed the original 2

assessments. Went to court – decision was in favor of POA – **Pond is required to pay 2 assessments as was originally platted.**

**Scott v Walker** – Supreme Court. Community had restrictions for single residence only. One owner rented property on a weekly basis. Circuit court interpreted SFR to mean property not for rental purposes. VA Supreme court said rental was OK because covenants were not specific as to rental. **Covenants should be construed strictly.**

**Hunt v ???** – in Chincoteague, VA – had canals, waterfront property. Disbursed throughout community were 30' wide access easements. Hunts moved into the community, purchasing from an original owner. Later refinanced their property and found on plat that land they'd been maintaining as their garden was in fact part of a 30' easement. The same was true for previous owner of the property. This had continued in excess of 15 years – an important time period. Hunts went to Board to get easement from association to continue to maintain their garden. Board said no. Hunts filed suit for adverse possession. **Court awarded all the property to the Hunts.**

**Pending POA Legislation** – New legislation creates CIC (Common Interest Community) Board. Will be the licensing authority for POA Managers. Except, RE Board shall have sole responsibility for enforcement of this chapter for anyone who is licensed by the RE Board.

The legislation will establish an ombudsman system for handling complaints and would require homeowners associations to set up a system for handling complaints. An 11 person Board will meet quarterly. There will be a complain procedure through the ombudsman. If an individual makes a complaint to POA Board and is not satisfied with response, they can pay \$25 to file complaint in Richmond. Could result in cease and desist order or up to \$1000 fine against POA.

Has passed House and Senate – waiting for Gov. signature – will become effective July 1, 2008.

<http://leg1.state.va.us/cgi-bin/legp504.exe?081+sum+HB516>  
<http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+HB516ER>

CNPOA members in attendance at the seminar were Charles May, Penny Hillman, Tom Israel, Kyle Goad, Paul Zeissett