

**Statutory Review
of the
Lake Monticello Owners' Association
Policies**

**Prepared for
The LMOA Board of Directors
March 9, 2009**

**Prepared by
The Ad Hoc Committee on Legislative Review**

Ad Hoc Committee on Legislative Review Approvals

The following members of the Ad Hoc Committee on Legislative Review have written and approve this report:

_____ /S/ _____ Date
_____ 3/3/09 _____
Mike Harrison, LMOA Board Member
Chair of the Ad Hoc Committee

_____ /S/ _____ Date
_____ 3/3/09 _____
John Platt, LMOA Board Secretary
Committee Member

_____ /S/ _____ Date
_____ 3/3/09 _____
Jean Burns
Committee Member

_____ /S/ _____ Date
_____ 3/9/09 _____
Wayne Schmidt
Committee Member

_____ /S/ _____ Date
_____ 2/27/09 _____
Ken Schmalzbach
Committee Member

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Introduction

The Lake Monticello Owner's Association (LMOA) Board of Directors created the Ad Hoc Committee on Legislative Review (Committee) to review the policies of the LMOA with respect to recent legislative changes to the Commonwealth of Virginia's Property Owners Association Act (POAA). There were changes in July 2008 and including new provisions governing common interest communities, adding a Common Interest Community Board, an Ombudsman function, rights of appeal and changes in disclosure packet requirements. In addition, professional managers of associations now are required to be licensed. The licensing requirements do not apply to LMOA because it directly employs individuals, as opposed to contracting with another entity for management services.

It should be noted that the Common Interest Community Board (CICB) is now formed, but it has not yet promulgated rules and regulations. The LMOA will be required to file an annual report to this board in July 2009 and will need to pay a \$1,000 fee that supports the CICB's work. That annual fee first will be due June 30, 2009.

In reviewing the governing and policy documents of LMOA, the Committee found significant issues of nonconformance with the POAA, not just the 2008 legislative changes. Most of these issues related to disclosure packet content and LMOA Policy Manual Chapter 4 on internal controls of the association. A significant disconnect exists between how LMOA manages its finances and requirements in the POAA. Throughout the review, the Committee identified areas where LMOA governing documents could be modified to bring the association into compliance and improve the transparency of LMOA documents and processes to members.

This report is organized to provide the Board of Directors and LMOA committees with interests in the subject matter information on the importance of alignment with the POAA and other statutes governing common interest communities. The Committee has completed its review, identified discrepancies and, in most cases, offered recommended language changes to sections of the LMOA Policy Manual. The Committee also linked recommended changes to LMOA documents to the statutes those changes address. In addition, the POAA contains provisions that are not addressed at all in current LMOA governing documents. Here the committee has provided recommended language capturing the intent of the POAA.

It is not the role of the Committee to change policies. That role rests solely with the Board of Directors with recommendations and specific language being developed by the advisory and operating committees of LMOA.

The expectation is that the Board of Directors will review this report and the detailed comments, along with suggested changes, and provide direction to the committees to modify policies to more closely align with the requirements of the POAA and certain other statutes that affect common interest communities. LMOA committees are expected to review the product of the Ad Hoc Committee and make the necessary corrections in

language and then recommend policy changes to the Board of Directors for approval. This report closes with recommended guidelines for changing policies. In light of the Ad Hoc Committee's expiration with delivery of this report, the members have agreed to be available to assist the Board, and advisory and operating committees of the association, in subsequent work to better align policies and procedures with statutes.

This report is organized starting with the approach the Ad Hoc Committee took. Some general observations were made and the risk to LMOA is covered. Some key recommendations are presented with consideration for timing of the changes. The overall objective is to close out the financial changes before accomplishing the 2010 budget. Readers will find numerous references to areas of non-compliance with the POAA. The Committee recommends that the financial structure of LMOA be consistent and in compliance with the POAA before budget approval. An interim method of dealing with the disclosure package is provided because it has considerable urgency. The packet suffers from the lack of information on reserves, mainly reserve requirements and funding. Appendix A contains guidelines for those that will review and write changes to bring the Policy Manual into conformance with the POAA. Appendix B contains the information relative to Chapter 4, Internal Controls. This is the chapter that requires the most substantive changes. Appendix C contains other changes to the balance of the chapters. Note that the Common Interest Community Board future regulations will require additional chapters to the LMOA Policy Manual and changes throughout.

Approach

The Ad Hoc Committee was composed of two current members of the Board of Directors, two former members, and a new member of our community who was not associated with the governance of LMOA. Carol Cavanaugh, who served as the staff liaison, ably supported the committee. In addition, the committee had participation from other members of the community who actively participated in our discussions. During the course of the work, one member needed to resign and was replaced by another former board member. The committee set some basic ground rules:

- The committee shall be consensus guided, striving for unanimous agreement on recommended changes,
- Where possible the Committee shall adopt language as close to that used in the POAA as possible to achieve maximum conformance of LMOA documents with the Commonwealth of Virginia statutory requirements,
- There is a need to build a glossary for the LMOA Policy Manual that defines terms in order to promote transparency,
- There is a hierarchy of documents governing LMOA and that this hierarchy shall be used in our review,
- Chapter and section rewrites for approval of the Board of Directors belong to the operating and advisory committees and in some cases the staff and this Committee's role is to identify discrepancies and suggest changes, not change policies,

- While work will be assigned to individual members for research and recommended changes, the full committee will approve all proposed changes after discussion, and
- Each recommended change must be traceable to statutes, regulations or a discrepancy between the hierarchies of documents that are related to the POAA requirements.

Worksheets were created to track changes. These worksheets represent the body of the committee's work and are the basis for recommendations and the timetable for changes. The format is provided in Figure 1. Operating and advisory committees can understand the rationale for changes and the linkage to the POAA.

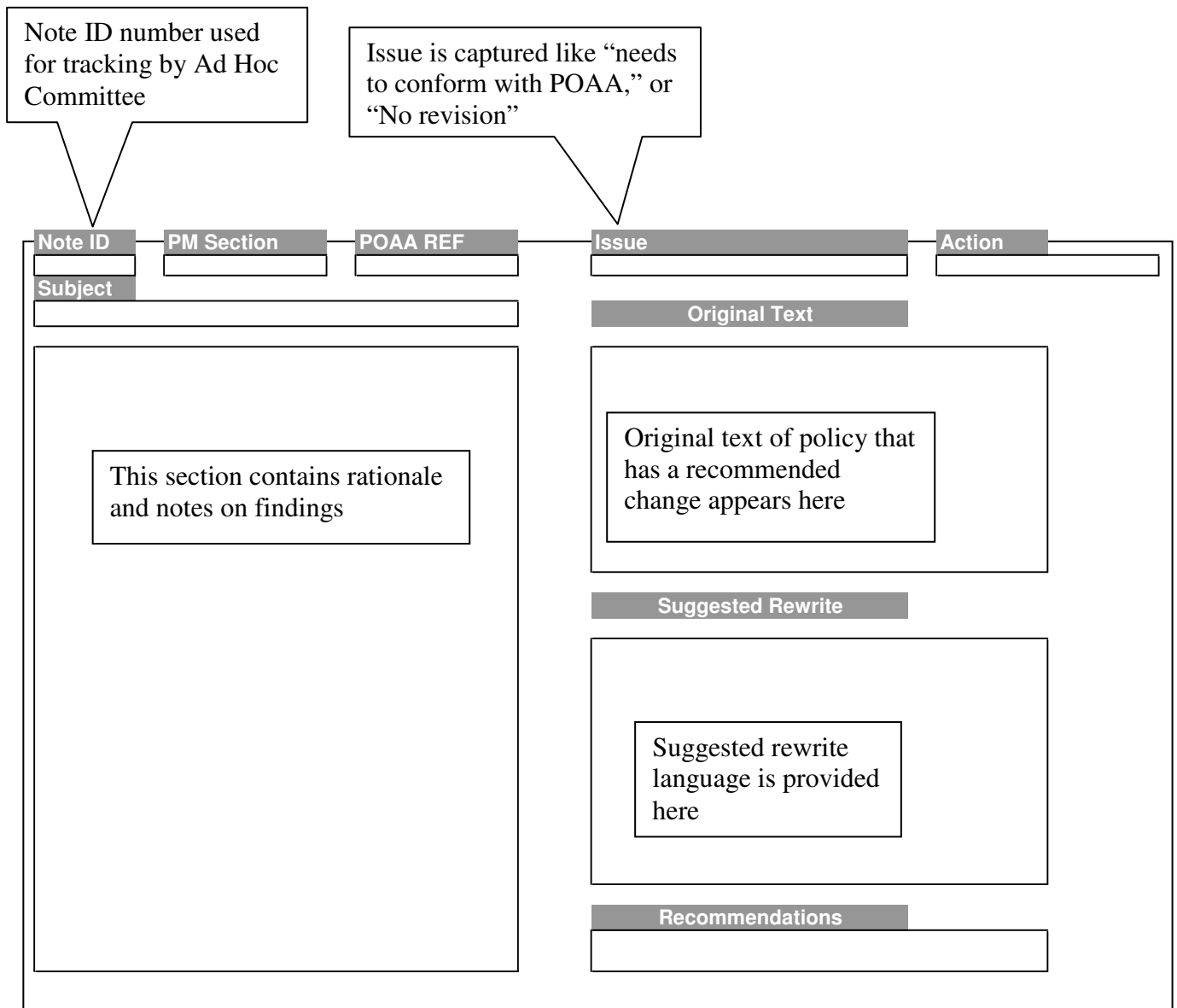


Figure 1. Worksheet Format

If the suggested rewrite is too long to fit on the template, the text is attached. Wherever possible, language of the POAA is used in order to clearly show alignment with the statutes.

The Ad Hoc Committee also tested LMOA’s compliance with member access to information that any member would be entitled to under the POAA. It was difficult to get access to information. Recommendations are made to facilitate transparency for existing members of LMOA. Future members must rely on the community association disclosure packet required by the POAA. Since the required disclosure package is a prospective new member's first introduction to LMOA governance, the committee reviewed this package

for compliance. For the disclosure package, it was determined that the product LMOA uses does not meet the intent or content requirements of the POAA, and the committee is offering a change in content. *This discrepancy is critical since it opens up LMOA to redress from new owners who believe they were misled by the lack of or quality of information.*

General Observations

Over many years of editorial and policy changes, the LMOA Policy Manual has lost its consistency, linkage to the POAA, and members' ability to understand LMOA requirements. Past boards have approved changes in a piecemeal fashion, in some cases without regard to requirements in the POAA. In some sections of policy, changes have not been made to stay current with the POAA. Few of the changes recommended by this committee relate to the most recent legislation. Rather, the recommended changes address current POAA requirements.

Several major rewrites of the LMOA Policy Manual, apparently intending to simplify language or use “plain English,” have caused this drift away from the requirements of the POAA. Throughout the balance of this report we refer to alignment, non-conformance and non-compliance. We have done this on purpose, and each term reflects a different degree of disconnect between LMOA and the Commonwealth of Virginia requirements. Non-compliance is the worse case. Non-conformance leads to non-compliance. Non-alignment leads to confusion and lack of transparency. If in non-compliance, more immediate action is needed by the Board.

- Alignment – orderly positions relative to the POAA – is the LMOA policy language logically connected to the POAA?
- Conformance – to be the same as or very similar to the POAA.
- Compliance – conforming to, and agreeing to do specific POAA requirements.

The POAA addresses multiple areas of association operations but places significant emphasis on the financial management of the association and the availability of association information to members (lot owners) and prospective members (disclosure packet). Although LMOA has operated fairly loosely regarding its policies, the size of the community can no longer support weak and non-conforming policies. In addition, the new Common Interest Community Board has enforcement powers to stop violations of the statute. The CICB has the power to file suit to stop violations of the statute, intervene in any action or suit involving a violation of the statute, issue cease and desist orders, and assess monetary penalties for violation of the statutes governing homeowner’s associations.

Any member of LMOA now has an avenue of appeal not available before. There is now a Common Interest Community Ombudsman to assist community members in understanding their rights and the processes available to them in dealing with a dispute. While the CICB has not yet issued regulations, the LMOA compliance procedures will

need to change, and recordkeeping will need to be improved to document compliance with statutory requirements. There is an LMOA compliance process in which LMOA addresses a member's violation of an LMOA rule, but such actions now can generate a complaint to the CICB because the member does not like the LMOA compliance action or believes there is inconsistency in applying the rules of the association. The complainant may also give notice to the Common Interest Community Board on any adverse decision, including those made by the Board of Directors of LMOA.

Hierarchy of Information

A hierarchy of information governs LMOA and its members; each layer can be more restrictive, but not less.

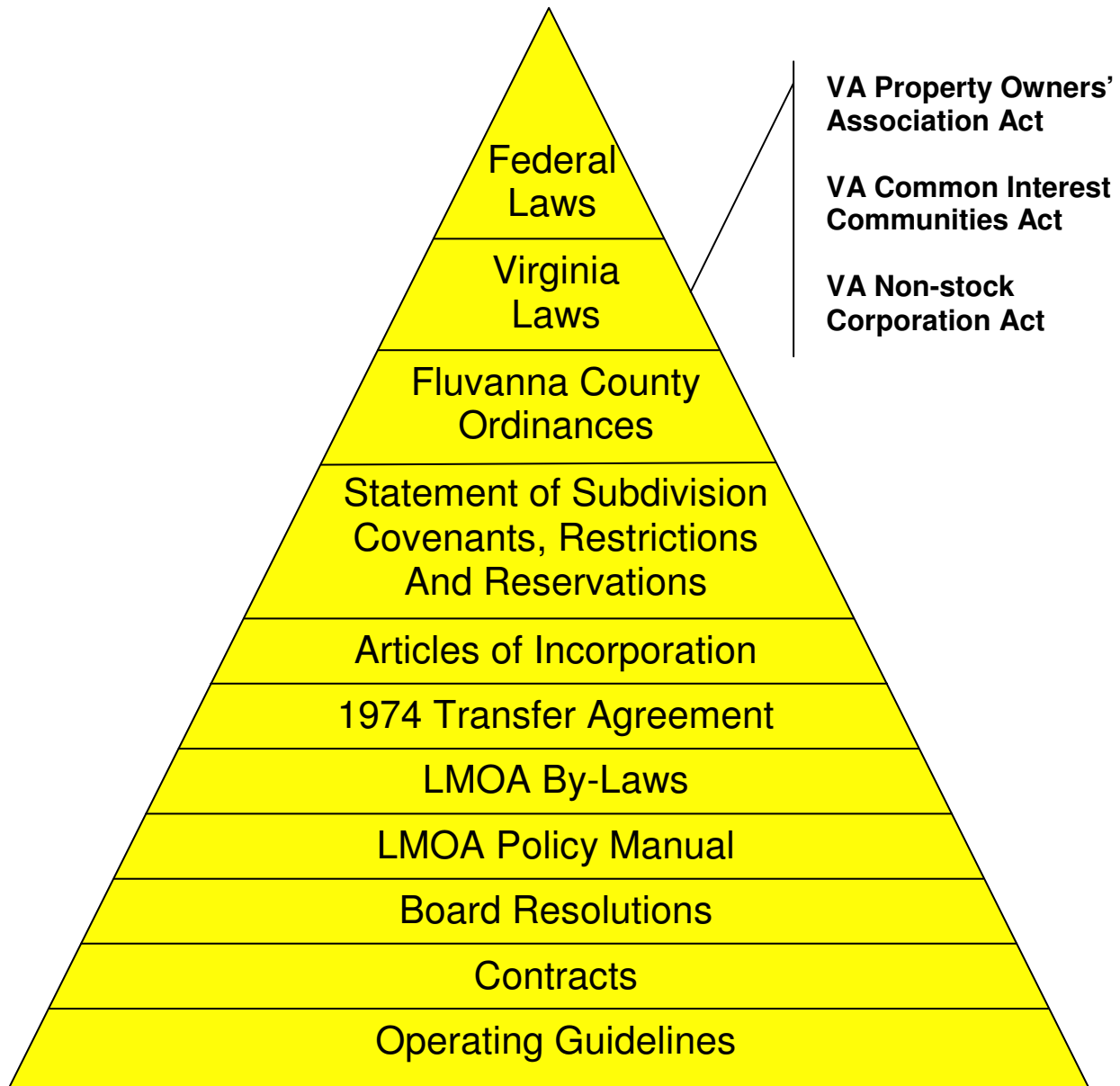


Figure 2. Hierarchy of Authority

This hierarchy was used to develop suggested changes in policies and to test for consistency down the pyramid. This hierarchy is important when the Board, and operating and advisory committees review the recommended changes or create new policy. A simple paragraph change in the Policy Manual can look logical and in the best interests of the community, but may not be in conformance with LMOA's covenants, restrictions and reservations, or the Statement of Subdivision, or higher requirements like those found in the POAA.

LMOA At Risk

The Board of Directors governs and manages the association through its policies. The POAA's emphasis on financial management and availability of information to members is designed to protect the members' investment in their community. LMOA faces two key areas of risk. Compliance policies and procedures (Chapter 16) will need to be modified once the Common Interest Community Board develops rules and regulations. The more immediate weakness is in our internal controls (Chapter 4) and our financial management.

Chapter 4, Internal Controls, addresses the majority of the POAA's requirements, both in terms of financial management and making information available to its members, and specific responsibilities and rights defined by the POAA.

At this juncture, Chapter 4 is so badly flawed that it offers little if any sound guidance for sound decision-making. There is a quote that applies here: "Unencumbered by the facts, there is no difficulty in reaching any decision." This quote characterizes what was discovered in the Committee's review of Chapter 4: definitions are inadequate; categories of budgets and accounts are in non-compliance with the POAA; and alignment between internal controls and requirements of the POAA is lacking. The policies are not reliable for the governance of the association. Every Policy Manual section requires more than "proof-reading." Some sections of the POAA are not addressed. New policies are required to meet the law.

The Board of Directors must understand the nature and scope of the policies and the responsibilities being assumed. A high degree of diligence in drafting changes is essential to the integrity of the documents and conformance with the Commonwealth statutes. Inartfully drafted documents can place LMOA and the Board of Directors at indefensible and unnecessary risk.

At Lake Monticello, transparency is no more than a term seeking a definition. Staff is placed in the middle, trying to be responsible and both compliant with the Board of Directors' position (which changes with each administration) and the requirements of the POAA. Aligning LMOA policies and the POAA will tend to resolve ambiguity and increase member access to information by relieving the staff of interpretation. Consistent application of good policy can do more to improve openness than any other Board action.

The Committee's comprehensive review of Chapter 4 has identified policies that are poorly drafted at best and seriously flawed at worst. A serious lack of implementation of

the policies appears to have its roots in the lack of instruction to staff (knowledge and understanding) regarding Chapter 4. Casual adherence to policy is traced to the ability to change policy to suit the situation, not using policy to drive consistency in action. Each year a new administration comes in with different philosophies and agendas without regard to the policies that represent corporate memory. In the absence of stable, consistent policy, staff is faced with constant instability, increasing the likelihood of LMOA non-compliance with the POAA. The Committee reviewed numerous prior policies and their changes to arrive at the conclusion that policies have been modified to the point of being ineffective.

An important portion of the content of LMOA policies, the basis for and rationale for changes in policy, is difficult to find or missing altogether. Policies, especially relating to internal controls and compliance, need to have appropriate footnotes that guide the user to the basis for the policy. Why was the change made? When was it made? What drove the changes? The history of the policy is its foundation. Without that foundation, wholesale changes can be made and the community drifts further away from alignment, conformance and compliance.

It is imperative that the Board of Directors establishes and enforces strict management standards for the association. This is done either through policy or contracts. Chapter 4, Internal Controls, and Chapter 16 on compliance are silent on the specific roles of the Board of Directors in establishing the necessary standards, oversight and control. The Committee believes that specific responsibilities should be identified, not only in constructing an annual budget, but periodic reviews of control measures. The Directors must be informed about how pervasive and critical Chapter 4 is and how compliance activities may become a more significant element of the workload.

A newly rewritten Chapter 4 could provide a summary of, and direction on, specific responsibilities of the Board that could significantly reduce LMOA risk. Part of the risk could be mitigated by a formal report by the General Manager on compliance with the most significant internal controls and other policies. But in the main, it is important for the Board to assume more of an oversight role relative to internal controls. The Board performs some of the following roles informally, but they need to be institutionalized, consistent with POAA as it relates to budgets, reserves and fiduciary responsibilities of the Board. As a minimum, the Board should exercise leadership and oversight on the following:

1. Establishing current and sound financial policies and procedures, including compliance with all applicable tax laws and regulations, and state laws governing LMOA;
2. Maintaining LMOA's tax status as per the 1974 Agreement as a non-profit corporation;

3. Overseeing obtaining the necessary insurance coverage, including casualty, public and directors' and officers' liability, workman's compensation, employee health care, etc.;
4. Establishing the budget, assessment rates, provision for reserves and allocating any surpluses appropriately to provide for the future;
5. Overseeing provision of effective care and upkeep of common areas and facilities, including the necessary preventive maintenance to preserve value;
6. Implementing the necessary legal actions and defending legal actions that affect the LMOA;
7. Selecting an external auditor and ensuring that the proper and prompt conduct of the audit is accomplished and reported to the Board. The type of audit should be agreed to by the Board and explained to the members;
8. Employing a General Manager and prescribing and overseeing implementation of personnel policies and procedures;
9. Obtaining surety or fidelity bonds to insure faithful performance by selected officers and employees of their financial responsibilities;
10. Prescribing clear and unambiguous policies on transparency and availability of information to property owners as required by the POAA, without limit or restriction;
11. Directing internal control audits in a timely manner and receiving the reports of such audits and make available to the members;
12. Conducting, at least annually, an executive session and an open session with the General Manager to assure that all the policies in Chapter 4 and Chapter 16 relating to compliance are being applied and enforced with consistency, thoroughness and accuracy. This General Manager reporting session(s) is to assure that the Board appropriately may rely on its policies to guide staff and members in the discharge of their respective rights and responsibilities.

LMOA is exposed to risk through 1) failure to have policies covering the requirements of the Commonwealth statutes and regulations governing common interest communities, 2) failure to execute the existing policies or doing so in a manner that is not consistent with other requirements in the hierarchy of governing documents, 3) failure to execute policies consistently for all members, and 4) failure to provide transparency and disclosure of financial and planning information to its members and prospective members (through the disclosure package).

As it stands now, policies can be changed by a simple majority of the Board following a first and second reading. If the Board of Directors is to act consistently, administration after administration, it may be useful to modify this process to require a super-majority, say 5 of 7. This would have the effect of stabilizing the policies by requiring more careful justification of changes by a new administration.

Key Recommendations and Timing

Each suggested change the Ad Hoc Committee has identified for specific sections of policy contain recommendations, either as rewritten text to consider, or specific questions that should be addressed. This section is dedicated to the critical changes needed that require some urgency. These are non-compliance issues that have been found relating to the POAA.

Fix the Disclosure Package. The Ad Hoc Committee has provided a proposed new disclosure package that is aligned with the POAA. LMOA should provide nothing more than is required by the POAA, in the exact order of the POAA requirements and with appropriate notes to explain where LMOA deviates from the content. An example is the continued consideration of the Long-Term Investment Account as a reserve item. Until the balance of Chapter 4 can be recast, use an interim approach to properly characterizing reserves.

Define Accounts Consistent with the POAA. The POAA identifies “capital components” which are items, whether or not a part of the common area, as to which the association has the obligation for repair, replacement or restoration. It specifies the need for reserves for capital components and the need to make any adjustments the Board of Directors deems necessary to maintain reserves. Over the years, policies and procedures have been modified to muddle the characterization of accounts. This alignment, especially on the capital and reserves side, should be done before the annual meeting in June and explained to the members, reflected in the disclosure package, and used in formulation of the next budget.

Create Clear and Unambiguous Policies on the Release of Information to Members. The POAA § 55-510, consistent with the restrictions in §55-510 C., that limits certain information. tells LMOA what information available and how to do it. All other information should be made available upon request or provided in the resource room and be available for copying by those members in good standing. If withholding the information is not specifically authorized by the POAA, it is releasable, including all books, taxes filed, insurance policies, awarded contracts, and related financial documents upon written request.

Provide the Basis for Board Meeting Motions. In our research it often was difficult to identify the rationale for changes in policies. This is because the minutes of meetings lack sufficient detail. As a minimum, the resolution proposal containing the background, alternatives considered, sources of funds, etc., should be included in the meeting minutes. Each motion requiring the obligation of funds should identify the source(s) of these funds. This allows members to reconstruct why changes were made over time. This body

of information provides the history for change. The fact that the meetings are recorded on video does adequately facilitate research on policy changes. This recommendation should be adopted retroactively to the start of the fiscal year so that there is traceability with changes in expenses and the budget.

Create a New Policy Chapter for Compliance. This recommendation is intended to address procedures, rules and regulations being developed by the CICB and possible rights of appeal of "final actions" taken by LMOA. This would pull the compliance procedures out of Chapter 16, and, ultimately merge LMOA policies and procedures and the requirements and rights established by the CICB rules and regulations. There is adequate time to make this change, but it should not be approached piecemeal. It needs an integrated re-write.

Create a New Operating Committee on Reserves. This should be an operating committee of LMOA charged with the responsibilities identified in POAA § 55-514.1 and making a recommendation to the Board of Directors at the start of the annual budget process on reserve requirements. This committee would then work with the Finance Committee to refine depreciation, funding of reserves, and major repair and replacement funding for facilities and infrastructure. The job is much different from committee work by Building, Roads and Grounds. However, Building, Roads and Grounds is a major input to any reserve requirements. This new committee should be in place to work the 5-year reserve study and can be made up of members currently working this issue through the strategic plan. The committee needs to be in place in time to accept responsibility for the next 5-year reserve study.

Meet the Reserve Requirements for Budgeting. § 55-514.1.B of the POAA requires associations to address reserves:

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, estimated useful life and remaining depreciation balance of the capital components;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace or restore capital components and the amount of the expected contribution to the reserve fund for that year; and
3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

This can be interpreted as a reporting requirement, letting members know within the context of the budget that there is a shortfall in reserves or that reserves have been adequately provided for. Where LMOA has fallen behind is in proper disclosure of the reserves status with respect to the POAA and in funding with respect to the vitality of LMOA. The reporting requirement cannot be ignored and must be part of any future budget. This section of the POAA can have a powerful influence on the discipline of the Board of Directors, specifically in B.3, where the Board must explain the level of reserves. As discussed earlier in this report, recasting how accounts are identified and handled will facilitate this.

Procedures for Liens. § 55-516 of the POAA is specific on the authority to issue liens against delinquent property owners. LMOA needs to review and include in a new compliance chapter provisions and policies for imposing liens. This new policy, aligned with the POAA, needs to be in place by December 2009.

General Budget Processes. Because of the specificity of POAA requirements about “capital components” and reserves, changes to Chapter 4 and the structure of our accounts need to be changed before release of the 2010 budget. LMOA must show immediately that it is beginning to come in line with the POAA. The characterization of the budget and provision of financial information to the members and prospective members (through the disclosure package) frames a change in direction by the Board and the operating/advisory committees toward compliance and transparency.

The Investment Strategy. The POAA is silent about investments. However, the fundamental reason for the POAA and the CICB appears to be regulation of “professional” managers who have ripped off or ineffectively managed homeowners’ association resources. The Ad Hoc Committee did not take on the investment strategy (Chapter 4.02Q) but believes that the Long Term Investment Account (LTIA) needs to be explained in terms of how it can and cannot be used. Members need to understand that while it is an asset of the organization, it is not available to deal with the management of the common areas and facilities. Further, the restrictions are such that it is really an emergency contingency fund, not available for association use to offset other costs.

Terms Should Be Defined. There is a need to define terms used in the Policy Manual. These terms have their origin in the POAA, the covenants and restrictions, the statement of subdivision and other documents. It is recommended that as each committee makes recommended changes to their respective sections of the Policy Manual, they also define the terms used in that section. The Board can decide whether these definitions should appear in each policy section, be aggregated and appear in the front of the Policy Manual or as an appendix to the Policy Manual.

The recommended timing of the various changes is predicated on the purpose of each policy. If it relates to the budget, then changes should be made in the policy

and approved by the Board prior to approval of the 2010 budget. The disclosure package needs to be modified immediately by explaining reserves so as to not mislead prospective buyers. Modification to create a new section on compliance can be done incrementally as the regulations and procedures of the Common Interest Community Board become available.

A new policy section on reserves should be drafted by the new operating committee on reserves and finalized by October 2009 so that information is aligned with and available to support the 2010 budget.

The following table summarizes the timing for making changes:

Chapter 1	May	Chapter 2	May	Chapter 3	May
Chapter 4	October	Chapter 5	Annual Review	Chapter 6	May
Chapter 7	Deleted	Chapter 8	July	Chapter 9	Deleted
Chapter 10	Deleted	Chapter 11	July	Chapter 12	July
Chapter 13	September	Chapter 14	December	Chapter 15	December
Chapter 16	October	Chapter 17	Deleted	Chapter 18	October
Chapter 19	August	Chapter 20	May	Chapter 21	September
Chapter 22	December				
New Compliance					

These months for updating policy by Board of Directors motions have been selected based not only on the need to bring our policies into conformance with the POAA, but also to coordinate with other actions. Completing any changes in Chapters 1, 2 and 3 in May can prepare the members for administrative changes at the annual meeting on June 27, 2009. Chapter 15 has segments dating back to 1997 on communications and is outdated. Chapter 19 on security will need an update to reflect the emergency response plan being worked within the Strategic Plan. Chapter 21 on Lake Health will likely be modified to incorporate the dredging policies. A decision is needed as to whether dredging belongs in Chapters 13 or 21.

Supporting Documentation

Throughout the review by the Ad Hoc Committee, the latest documents were used and on-line access was used for the POAA and the Common Interest Community Board. Members challenged each other on the currency of sources and if there was a question, we sought clarification. The disclosure package examined included updates as recent as the new dues and fees structure and information on pending litigation. The Committee wants to thank staff for their cooperation in locating certain documents not readily available to the Committee. The following is a list of source documents used, including those that represent the hierarchy of authority for LMOA:

- Virginia Property Owners' Association Act
- Virginia Common Interest Communities Act
- Virginia Common Interest Community Management Information Fund
- Virginia Common Interest Community Association Liaison Information
- Virginia Non-stock Corporation Act
- Fluvanna County Ordinances
- Statement of Subdivision with Covenants, Restrictions, and Reservations
- Recorded map(s) of subdivision and 12 sections that includes common areas, individual lots, etc. (ECC administrative files access and Fluvanna County files)
- Articles of Incorporation
- The 1974 Transfer Agreement between developer and LMOA
- LMOA By-laws
- LMOA Policy Manual
- Administrative Resolutions/Special Resolutions/General Resolutions by the Board
- Contracts
- LMOA Insurance Policies
- Rental Agreement (Sunset)
- LM Roads Ordinances covering traffic enforcement
- Several Resource Guides
 - Financial Reporting Responsibilities for Common Interest Community Associations in Virginia
 - Conflict Resolution for Virginia's Common Interest Communities
 - Statutory Rights and Responsibilities of Members of the Board of Directors for Virginia Common Interest Communities
 - Rights and Responsibilities of Owners of Common Interest Community Property in Virginia

The Disclosure Package

The Ad Hoc Committee on Legislative Review received copies of the October 2008 edition of the LMOA disclosure packet. This packet is sent to prospective buyers of homes at Lake Monticello. The packet is required by the POAA, and LMOA collects a fee of \$100 for the initial packet and \$50 for any subsequent updates. The seller is responsible for obtaining the package for the buyer. Prospective new owners use the information to evaluate the financial soundness of the community, and to learn about activities and issues within the community, and any pending litigation that may affect their subsequent commitments. The disclosure packet is an opportunity to see if LMOA has adequate financial reserves and can be used by the prospective buyer in negotiations with the seller. The purchaser has three days after receiving the packet in which to cancel the contract to purchase the property.

Timely delivery of the packet to the seller by LMOA is required under the POAA. The association has 14 days after receiving written requests to deliver the association disclosure packet. Timely delivery has not been a problem for LMOA. Our issues are with complete, accurate and current content. Does the package fulfill the requirements of the POAA and are the submitted items current? Does the disclosure packet adequately disclose required information about certain kinds of issues that are current within the community, e.g., nature and status of pending litigation to which LMOA is a party and which may have a material impact on the association or its members, amount of any reserve fund allocated by the Board of Directors for a specified project? Are we sending the right stuff? It is the unanimous conclusion of this Committee that we are not. Examples of non-conformance are provided after we cover what is required. LMOA's objective should be to revise the disclosure package to include the 16 items required by the POAA, provide no other information than that which is required and carefully adhere to a standard of timeliness in the content.

POAA Requirements

It is worth restating the actual requirements here, before introducing a table that has been created to act as a guide in pulling together the necessary information for the packet.

§ 55-509.5. Contents of association disclosure packet; delivery of packet.

A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or his authorized agent, an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;
2. A statement of any expenditure of funds approved by the association or the board of directors that shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;
3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to [sic] the right of use of common areas, and the status of the account;
4. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;
5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;
6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;
7. 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;
8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including the fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;
10. 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;

11. 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;

12. 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;

13. 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;

14. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

15. A copy of the fully completed one-page cover sheet developed by the Common Interest Community Board pursuant to § [54.1-2350](#); and

16. Certification that the association has filed with the Common Interest Community Board the annual report required by § [55-516.1](#), which certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing.

These requirements may change over time so it will be necessary to update the packet contents. Timeliness of content is governed by the sentence in § 55-509.5 A., which states that: *“The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet.”* LMOA can declare portions of the content by using a fixed date, provided it is cited in the packet. Other items in the set of 16 must be more current, such as copies of approved minutes. The last two items reflecting work yet to be completed by the CICB have not been created by regulation, and LMOA’s interaction with the CICB is not expected until the filing associated with our annual meeting in June 2009 and submission of the LMOA Annual Report. Until then, LMOA should continue using the Real Estate Board documentation.

Table 2 has been created as a guide for LMOA staff to use in preparing disclosure packets. The required items should be packaged in the order that the POAA requirements are set out in the statute and tied to the POAA item numbers from subsection A of § 55-509.5.

Table 2. LMOA Disclosure Packet Guidelines

POAA Requirement	LMOA Product	Currency Date	Notes
1. Name, State of Incorporation and Business Address	Transmittal Cover Format	List currency of information in package	Example provided
2. Statement of expenditure of approved funds that shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year	This statement is “None” unless there is a vote of the members <i>or a special assessment by the Board that covers future needs</i>	Current Fiscal Year Budget Show ‘as of date’	If the annual meeting approves dues increases or approves any special assessment that becomes effective after that vote, the increase shall be identified in Item 2. If the effective date is the start of the annual budget, this obligation shall be added to Item 3.
3. Statements of the amounts of all assessments and any other mandatory fees or charges currently imposed; any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and with the right of use of common areas, and the status of the account;	<ul style="list-style-type: none"> • Schedule of Dues, Fees and Assessments • Status of current account for the lot being sold 	Annual schedule of fees for the current date of the disclosure package Show ‘as of date’	Packets distributed after budget approval, but prior to January 1 shall carry an addendum reflecting the dues, assessments and fees that have been approved but are not yet due from members.
4. Statement as to whether any other entity imposes assessments, dues, fees, and charges	This Statement is None, unless purchasing a marina condominium	Show ‘as of date’	There are “other entity” fees if purchasing a marina condominium site only

POAA Requirement	LMOA Product	Currency Date	Notes
5. Current reserve study or summary; statement of status and amount of reserves; the portion of the reserve fund allocated by the board of directors for specified projects	See the following write-up discussion	As approved with the annual budget Show 'as of date'	The current LMOA disclosure packet is problematic in that it does not reflect the special status of the LTIA, which is not a reserve and is misleading to the purchaser
6. A copy of current budget or summary; statement of income and expenses or statement of financial position (balance sheet) for the last fiscal year, including a statement of balance due on any outstanding loans	<ul style="list-style-type: none"> • Copy of annual approved budget • Annual Balance Sheet for previous fiscal year • Statement of loans – balance due 	January approved budget Most recent annual balance sheet Previous month statement of outstanding loans Show 'as of date'	It is not recommended that monthly, un-audited balance sheets be provided since it is not required
7. Statement on 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;	Filing information and one paragraph nature of the case against LMOA drafted or reviewed and approved by LMOA counsel.	Current at the time of request for the package Show 'as of date'	Case name and number (e.g., Shiff vs. Lake Monticello Owners Association, Fluvanna County Circuit Court) and one paragraph nature of the case against LMOA

POAA Requirement	LMOA Product	Currency Date	Notes
8. Statement of insurance coverage provided for all lot owners by the association, including the fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner	Current table of coverage. Statement that lot owners normally obtain home owner's insurance.	Effective with fiscal year Show 'as of date'	This is insurance carried by LMOA on behalf of all members
9. Statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;	ECC inspection report	Inspection date timed to request for Disclosure Package request Show 'as of date'	A report of violations requiring action by the current property owner may be corrected; provided there is a re-inspection to clear discrepancies. At time of sale, new owner assumes only those conditions and restrictions identified by LMOA. Per POAA § 55-509.6.K. "the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, by-laws, rules and regulations, architectural guidelines of the association as of the date of the statement unless the purchaser had actual knowledge that the content of the disclosure packet were in error."

POAA Requirement	LMOA Product	Currency Date	Notes
10. Statement on restrictions, limitations, or prohibitions on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale	Use Chapter Section 13.05	Current version as from Web Site Show 'as of date'	
11. Statement on restrictions, limitations, or prohibitions 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;	Refer to Chapter 13 section VI. J. "Flagpoles shall not exceed 20 feet in height at the highest point."	Current version as from Web Site Show 'as of date'	

POAA Requirement	LMOA Product	Currency Date	Notes
12. Copy of the current declaration, articles of incorporation and bylaws, and any rules and regulations or architectural guidelines	<ul style="list-style-type: none"> • Copy of applicable Covenants, Restrictions and Reservations contained with the Statement of Subdivision for that Section • PM Chapter 1 • PM Chapter 2 • PM Chapter 6 • PM Chapter 11 • PM Chapter 13 • PM Chapter 14 • PM Chapter 15.01, 15.14, 15.16 • PM Chapter 16.02 • PM Chapter 18 	Current version as on Web Site Show 'as of date'	Each of these PM sections contains restrictions on lot owners or rules they must follow, along with compliance procedures and appeals.
13. Approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the packet	Self-explanatory	Approved minutes for 6 months of regularly scheduled meetings Show 'as of date'	
14. Notice given to the lot owner of any current or pending rule or architectural violation	<ul style="list-style-type: none"> • ECC inspection survey • Pending compliance actions 	Show 'as of date'	

POAA Requirement	LMOA Product	Currency Date	Notes
15. The completed cover sheet developed by the Common Interest Community Board		Annual Update Show 'as of date'	Pending creation of the cover sheet by the Common Interest Community Board, use current copy of existing documentation current through 7/30/09
16. Certification of filing with the Common Interest Community Board the annual report with the filing number assigned by the Common Interest Community Board, and the expiration date of the filing.		Annual Update Show 'as of date'	Pending submittal of the LMOA annual report and acceptance by the Common Interest Community Board, continue using existing documentation through 7/30/09

The most problematic section of the disclosure package is the financial information. Part of this problem is the current general structure of LMOA accounts, how certain items are carried, and general changes that are needed to make PM Chapter 4 consistent with other recommendations of the Ad Hoc Committee. The LMOA should not wait for all changes in PM Chapter 4 before modifying the budget and reserve information in the disclosure packet.

Disclosure requires the current reserve study or summary, a statement of status and amount of reserves, and what portions of these reserve funds are allocated by board of directors for specified projects.

Required items for a reserve study and its annual review are defined in POAA (§ 55—514.1). Capital components “means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.”

§ 55-514.1. Reserves for capital components.

A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore capital components and the amount of the expected contribution to the reserve fund for that year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

Since LMOA is not now complying with its obligations with respect to reserves, how reserves are handled must be disclosed. A statement of the lack of adequacy of existing reserves should be provided, since the current balances are well below the 2005 reserve study recommendations. A significant discrepancy results from considering the \$6,603,062 in the Long-Term Investment Account as a reserve. It makes the association appear healthier than is accurate. This is because of the restrictions on use of the LTIA. It takes a vote of the members to not only allocate money; but also decide what it is to be spent on. Since other accounts like the Property Transfer Fee are also dedicated, the sources of funds should be recast in terms that the purchaser can understand without intimate knowledge of LMOA. We need to get closer to transparency until the necessary reserve studies are completed and decisions made on changes to how LMOA characterizes these accounts.

As an interim transition until Chapter 4 is updated and accounts re-aligned, the following breakout for reporting reserves is recommended with the appropriate notations:

LAKE MONTICELLO OWNERS' ASSOCIATION RESERVES

The 5-year Reserve Review scheduled for 2009 in support of the 2010 budget formulation will identify reserve requirements. LMOA is also undergoing a reserve review as part of our strategic planning. At the start of 2009, the previous reserve review done in 2005 identified through 2008 a needed reserve of \$2.3 million.

LMOA is building its reserves through a combination of dues and fees. Some of these are dedicated by member vote, including lake health and roads. Other reserve revenue comes from the Property Transfer Fee, New Home Construction Fee, and Major Miscellaneous Construction Road Maintenance Fees that are dedicated to reserves by the Board of Directors. From dues, \$25.75 per year, per lot, goes to the road reserve and \$49.44 per year goes to lake health to sustain the quality of the lake through dredging, storm water management and other best practices. The table below shows the reserve category, balance as of the end of 2008, and the estimated contribution from dues and fees for 2009.

Reserve Category	Balance	2009 Contribution Estimate
Major Repair and Replacement		
Amenities (Marina, pool, golf, tennis, fields, clubhouse)		Use Pool Reserve balance
Roads		\$149,142
Lake Health		\$230,729
Undesignated (discretionary)		
Misc. (equipment)		Equipment depreciation
Total		

In addition, LMOA generates investment income. The principal in some of these investment accounts are not directly available for reserves. One such account, called the Long-term Investment Account, may not be used unless the members vote to release any or all of the principal. This account represents the proceeds from the sale of the community's water works. The other accounts represent investment of reserves and other funds pending expenditure. The Board of Directors allocates funds to specific reserves during the annual budget approval process.

Investment Category	Balance
Long-Term Investment Account – Restricted	\$6,630,062
Long-Term Investments, Growth Account	101,406
Discretionary Funds	294,371
Total	\$7,025,839

As of November 30, 2008

The following specified projects are budgeted in 2009 to be funded from reserves:

Item	Amount
Road Upkeep	\$50,000
Reserve Study	11,500
Computers	8,440
Clubhouse Exterior Paint	4,900
Fire Hydrants	10,000
Utility Trailer	1,500
Marina Basin Slips	30,000
Pool Furnishings	4,745
Tennis Windscreens	2,700
Golf Sod Cutter	4,000
Greens Reconstruction	80,000
ECC File Cabinets	2,500
Barcode Scanners for Gate Entry	16,000
Contingency Funds	15,000
Total	\$241,285

**LAKE MONTICELLO OWNERS' ASSOCIATION
ASSOCIATION DISCLOSURE PACKET**

This packet has been prepared in accordance with the requirement of the Code of Virginia, Title 55, Chapter 26, Section 55-509.

THE INFORMATION CONTAINED IN THIS DISCLOSURE PACKET IS SUBJECT TO CHANGE. LAKE MONTICELLO OWNERS' ASSOCIATION ASSUMES NO OBLIGATION TO UPDATE THIS INFORMATION AFTER IT HAS BEEN DELIVERED TO THE PROPERTY OWNER WHO HAS REQUESTED THE PACKET. THE SELLER, SELLER'S AGENT, PROPERTY OWNER OR SETTLEMENT AGENT MAY REQUEST UPDATES OF THIS INFORMATION AS SPECIFIED IN THE VIRGINIA PROPERTY OWNERS ASSOCIATION ACT, §§ 55-509.6 H. OR 55-509.7 B., AS APPROPRIATE.

TO THE BEST OF THE ASSOCIATION'S KNOWLEDGE, THE INFORMATION IS COMPLETE AND ACCURATE AND CURRENT AS OF THE DATES PROVIDED ON THE VARIOUS SECTIONS OF THE PACKET. THE ASSOCIATION MAKES NO WARRANTY OR GUARANTEE AS TO CONTENT.

NOTE: Once the disclosure packet has been picked up and signed for, LMOA is no longer responsible for the packet. Disclosure packets may not be brought back to LMOA for mailing after pick up.

Cost of Packet: \$100.00

Date Packet Issued: _____

Property: Lot _____ Section _____

ASSOCIATION DISCLOSURE PACKET NOTICE

NOTE TO PROSPECTIVE PURCHASERS: The lot you are considering purchasing is in a development that is subject to the provisions of the Virginia Property Owner's Association Act (POAA). Living in a common interest community carries with it certain rights, responsibilities and benefits.

Some of the benefits include the right to use common areas, subject in some cases to user fees, which may include amenities like parks, playgrounds, swimming facilities, a lake with its marina, golf course, tennis courts and athletic fields, and a club house. In order to finance the operation of the community, each owner is responsible for and obligated to pay regular assessments, and if necessary, special assessments to ensure that the financial requirements of the community are met. Failure to pay any of these assessments may result in a lien being placed on your property.

The use of common areas, financial obligations of lot owners and other information concerning the rights, responsibilities and benefits resulting from the purchase of a lot in this community are subject to the provisions of governing documents that include a declaration, by-laws, articles of incorporation, and rules and regulations that affect you. These documents play an important role in common interest community living and should be reviewed carefully prior to your purchase.

Some decisions of your association will be made by the Board of Directors, while others will be made by a vote of association members, made up of the other lot owners in the community. You will be bound by all decisions of the association and the Board of Directors. Documents in this packet contain information concerning selection of members of the Board, meetings, voting requirements, and other important information you should become familiar with. **REMEMBER:** Failure to comply with the governing documents of your association can result in legal action being taken against you.

Information provided in the packet is listed in the table of contents and is arranged in the order identified in the POAA.

ALL DOCUMENTS AND INFORMATION CONTAINED IN THIS DISCLOSURE PACKET PLAY AN IMPORTANT ROLE IN LIVING WITHIN A COMMON INTEREST COMMUNITY AND SHOULD BE REVIEWED CAREFULLY PRIOR TO YOUR PURCHASE OF THE PROPERTY.

RECIPIENT NAME (Please Print) _____

RECIPIENT SIGNATURE _____

DATE _____

TABLE OF CONTENTS OF ASSOCIATION DISCLOSURE PACKET

The following information is required by of the Code of Virginia, Title 55, Chapter 26, Section 55-509.5

Item	Content
1	The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia
2	A statement of any expenditure of funds approved by the association or the board of directors that shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;
3	A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;
4	A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;
5	The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;
6	A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;
7	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;
8	A statement setting forth what insurance coverage is provided for all lot owners by the association, including the fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
9	A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;
10	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;
11	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;

12	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;
13	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;
14	A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;
15	A copy of the fully completed one-page cover sheet developed by the Common Interest Community Board pursuant to § 54.1-2350; and
16	Certification that the association has filed with the Common Interest Community Board the annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing.

For additional information you can visit the Lake Monticello Owners' Association's website at <http://lmoa.org>.

The balance of the contents of the package goes here, leading off with the following example header:

POAA Item 1 Name of Organization

Name: Lake Monticello Owners' Association (LMOA)
Incorporation: Commonwealth of Virginia
LMOA Address: 41 Ashlawn Boulevard,
 Lake Monticello, Virginia 22963

Registered Agent Francis L. Buck, Esq.
 211 East High Street
 Charlottesville, Virginia 22902

POAA Item 2 Additional Assessments

As of _____(date) there are no additional community assessments beyond the regular schedule of dues, fees and assessments provided in Item 3. The Board of Directors is currently working on a dues increase for consideration and member vote at the annual LMOA meeting scheduled for June 27, 2009.

There (is or is not) a special assessment against Lot ____ Section _____ relating to compliance with the rules and regulations of the community. Details are provided in POAA Item 9.

POAA Item 3 Dues, Fees, Charges and Assessments