

## Hot Topic: Resources for the discussion around decorations

### A. Courtesy reminder for Board meetings:

Please remember to be cordial, maintain calm voices, and listen completely to another's thoughts.

- Any raising of voices may result in a pause in the conversation in an effort to keep the conversation respectful and keep minds open to the discussion.
- Please remember your Board is made of fellow homeowners who volunteer their time to maintain the community to the best of their ability and to the letter of the law as it is understood by the rest of the Board, Management, and General Counsel.
- Our meetings are guided by the Rules of Order for Association Boards. Source: <http://nebula.wsimg.com/7948014777b61e7900a3caa695eba94d?AccessKeyId=9DCCC2E0379802ABADDDB&disposition=0&alloworigin=1>

### B. Code and By-laws:

§ 55.1-1900, of the Virginia Condominium Act, (Effective October 1, 2019). Definitions. "**'Common elements' means all portions of the condominium other than the units.**" Source: <https://law.lis.virginia.gov/vacode/title55.1/chapter19/section55.1-1900/>

§ 55.1-1900, of the Virginia Condominium Act, (Effective October 1, 2019). Definitions. "**'Common expenses' means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.**" Source: <https://law.lis.virginia.gov/vacode/title55.1/chapter19/section55.1-1900/>

Rule 1, Schedule A to By-laws. Rules and Regulations of Brighton Park at Greenbrier, a Condominium. "**No sign, advertisement, notice or other lettering, painting or decoration including without limitation, "For Rent" or "For Sale" signs, shall be exhibited, inscribed, painted or affixed on any part of the Condominium, including, without limitation, on the outside of a Unit or in the windows of any Unit or in the Common Elements without the prior written consent of the association.**" Source:

<http://nebula.wsimg.com/b16585a6b41bf7bf8c4287430f0cdf4f?AccessKeyId=9DCCC2E0379802ABADDDB&disposition=0&alloworigin=1>

§ 55.1-1956, of the Virginia Condominium Act, (Effective October 1, 2019). Control of common elements.

A. Except to the extent prohibited, restricted, or limited by the condominium instruments, the unit owners' association shall have the power to:

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association arising under § 55.1-1955;

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2. Make or cause to be made additional improvements on and as a part of the common elements;

3. *Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit that would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval;* and

4. Acquire, hold, convey, and encumber title to real property, including condominium units, whether or not the association is incorporated.

B. Except to the extent prohibited, restricted, or limited by the condominium instruments, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, has the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, including the right, in the name of the unit owners' association, to (i) grant easements through the common elements and accept easements benefiting all or any portion of the condominium; (ii) assert, through litigation or otherwise, defend against, compromise, adjust, and settle any claims or actions related to common elements, other than claims against or actions involving the declarant during any period of declarant control reserved pursuant to subsection A of § 55.1-1943; and (iii) apply for any governmental approvals under state and local law.

C. This section shall not be construed to prohibit the grant by the condominium instruments of other powers and responsibilities to the unit owners' association or its executive board. Source:

<https://law.lis.virginia.gov/vacode/title55.1/chapter19/section55.1-1956/>

§ 55.1-1955, of the Virginia Condominium Act, (Effective October 1, 2019). Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee.

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements and (ii) to the individual unit owner in the case of any unit or any part of such unit, except to the extent that the need for repairs, renovation, restoration, or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the damage, shall be liable for the prompt repair of such damage. Source: <https://law.lis.virginia.gov/vacode/title55.1/chapter19/section55.1-1955/>

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### C. The current waiver limit:

Currently, the Board is waiving Schedule A, Rule 1 of the By-laws prohibiting decorations within the community. The current waiver is for one decoration, with an approved ARB waiver. Source: <http://www.brightonparkgreenbrier.com/how-do-i...html>

### D. How to change the current waiver limit:

To change the waiver limit for decorations in the common elements, the association would need a majority vote of the Board or a  $\frac{2}{3}$  vote of the association.

- The Board is open to changing the waiver limit on decorations in the common elements, and encourages any new rule to consider these concerns:

1. safety of contractors/landscapers doing work around decorations
2. maintenance of the right of ways for ingress and egress
3. architectural aesthetics
4. minimal expressions so decorations do not detract from the overall conformity of the community
5. no prior approval required for the display of the US flag
6. display of the US flag does not count towards the waiver limit
7. mechanisms to effectively enforce compliance (might require a mobile inspection form for management to make inspections more comprehensive)
8. flexibility to recall waivers as common elements evolve (such as additional lighting)
9. no electrified decorations that could pose a shock hazard to contractors or other residents
10. a special blanket waiver for the month of December for seasonal and electrified decorations
11. maintenance hold for decorated areas during the month of December for the safety of contractors

### E. Steps that can be taken without a $\frac{2}{3}$ vote of the association:

- Volunteer to be a champion on a Decorations Committee that can assist the Board with new guidelines and enforcement policies for decorations in the common elements.
- Assist the Board with ideas to beautify existing common elements.
- Assist the Board with ideas to add new common elements (which could include additional lighting, landscaping, art, etc).