



Virginia State Bar
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The FEE TAIL

The Real Property Section's
email supplement to
The FEE SIMPLE

The Real Property Section is pleased to provide its members with ***The Fee Tail***, a newsletter with timely cases and statutes of interest to the practice of real estate law in the Commonwealth. We welcome all of our members to submit ideas for future *Fee Tail* issues to Heather Steele at hsteele@pesner.com. We prefer to draw these cases from our members, so if you have recently litigated (or are aware of) a current real estate case, either at the trial court or appeals level or a recent statute of interest to the section, please contact us.

Below are a few recent cases of interest, new statutes, and rulings of note, with links to decisions.

Cases of Interest

Salunkhe v. Christopher Customs, LLC (Court of Appeals, August 22, 2023)

Court of Appeals upheld ruling from Fairfax County Circuit Court granting partial summary judgment to defendants, finding that the subdivision plat did not contain any explicit notation that the right-of-way was for a public purpose, and therefore the public easement could not be transferred under Virginia Code §15.2-2265.

CFPB Penalizes Lender and Brokerage for Kickbacks (August 17, 2023)

Lender provided brokerages with incentives in exchange for mortgage referrals, in violation of Real Estate Settlement Procedures Act (RESPA).

Rulings of Note

Willems v. Batcheller (Court of Appeals, August 8, 2023)

Court of Appeals overturned Fairfax County Circuit Court and held that the defendants did not adequately plead adverse possession (it was pled only as an affirmative defense, and defendants did not ask the court to declare a new boundary line); therefore, the Circuit Court lacked jurisdiction to declare a new boundary line. Court of Appeals upheld Circuit Court's ruling that the statute of limitations does not apply to claims for solely equitable relief, under Va. Code §8.01-230.

Carniol v. Nayak (Fairfax County Circuit Court, August 4, 2023)

Circuit Court held that Plaintiff argued credible case for trespass and damages for diminution in market value of real estate due to “lollipopped” trees. Court held that although *Fancher* allows for self-help in trimming trees, the holding does not extend to allow trespass in the execution of self-help.

McNaughton v. Mountain Brook of Troy, Inc. (Louisa County Circuit Court, June 23, 2023)

Court awarded declaratory relief that the incorporation of the Association was not proper under the Declaration, as amended, and was therefore an *ultra vires* act. Because the incorporation of the Association was not valid, the subsequent amendment of the declaration by the incorporated Association entity was also not valid. The Court enjoined further action to enforce the invalid amendment



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