

May 2012

Community Associations Newsletter

2012 Virginia Legislative Update

By: Todd A. Sinkins and Kelly C. Zook

The 2012 legislative session resulted in a number of significant changes to the Virginia Property Owners' Association Act, the Condominium Act, the Common Interest Community Manager statutes, and other provisions of the Virginia Code. Unless otherwise noted below, the legislation addressed in this newsletter will take effect on July 1, 2012.

AMENDMENTS TO THE PROPERTY OWNERS' ASSOCIATION ACT ("POA")

Limitation on Contracts and Leases by Declarant

SB 628 adds a new Section 55-509.1:1 to the POA. This bill provides that prior to the end of the declarant control period, no contract or lease entered into with the declarant or entity controlled by the declarant shall be entered into for a period in excess of five years. This bill also provides that prior to the end of the declarant control period, no management contract or employment contract shall be entered into for a period in excess of five years. The bill further provides that any such contract or agreement entered into on or after July 1, 2012 may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control contemplated by the association's governing documents.

Information Required to be Produced by Declarant upon Transfer of Control

SB 628 also amends Section 55-509.2 of the POA. The bill requires the declarant to include, with other information provided upon transfer of control to the association, the number of lots that may be subject to the declaration upon completion of development, the number of members of the board of directors and number of such directors appointed by the declarant, together with names and contact information of members of the board of directors.

AMENDMENTS TO THE CONDOMINIUM ACT

Sale at Auction

HB 377 amends Section 55-79.87 of the Condominium Act by providing that the provisions of Sections 55-79.88 through 55-79.93, subsections A and C of 55-79.94 and Section 55-79.97 of the Condominium Act shall not apply to a disposition of a unit by a sale at an auction, where the resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

Time Period of Exercising Rights to Expand, Contract or Convert a Condominium

HB 902 amends Sections 55-79.54 and 55-79.61 of the Condominium Act to increase from seven (7) years to ten (10) years from the date of recordation of the declaration the time in which the declarant must exercise its rights to expand, contract or convert a condominium.

AMENDMENTS TO BOTH THE PROPERTY OWNERS' ASSOCIATION ACT AND THE CONDOMINIUM ACT

Recovery of Attorney Fees, Costs and Interest

HB 410 amends Sections 55-79.53, 55-79.73 and 55-515 of the Virginia Code. This bill amends Section 55-79.53(A) of the Condominium Act and Section 55-515 (A) of the POA by providing that the prevailing party shall be entitled to recover interest on the judgment, in addition to reasonable attorney fees and costs expended in the matter. The most significant change implemented by HB 410 was the addition of Section 55-79.53(B) of the Condominium Act and the addition of Section 55-515(B) of the POA, which provide that in actions against an owner for nonpayment of assessments in which the owner has failed to pay assessments levied by the association on more than one unit/lot or such owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association, the prevailing party shall be awarded reasonable attorney fees, costs expenses in the matter and interest on the judgment, even if the proceeding is settled prior to judgment. This bill further provides that the delinquent owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the association, whether any judicial proceedings are filed.

Deadline for Establishing Fee Schedule for Accessing and Copying Association Records

HB 1741 was introduced in 2011 and will become effective on July 1, 2012. This bill adds additional requirements regarding the provision of association records to requesting parties by providing that the charges for accessing and copying association books and records may be imposed only in accordance with a cost schedule adopted by the board of directors. The cost schedule shall: (i) specify the charges

for materials and labor; (ii) apply equally to all members in good standing; and, (iii) be provided to such requesting member at the time the request is made. If not previously adopted, each of our community association clients will need to adopt a fee schedule in compliance with this change through the adoption and publication of a resolution prior to July 1, 2012 that sets forth the charges for both material and labor associated with request for copies of the association's books and records.

AMENDMENTS TO THE COMMON INTEREST COMMUNITY STATUTES

Reduction in Number of Required Meetings of Common Interest Community Board

HB 917 amends Section 54.1-2348 of the Virginia Code. This bill reduces the number of times the Common Interest Community Board is required to meet. This bill requires the Common Interest Community Board to meet at least once each year and at other times as it deems necessary. The Common Interest Community Board was previously required to meet at least four times per year.

AMENDMENTS TO THE PROPERTY OWNERS' ASSOCIATION ACT, THE CONDOMINIUM ACT AND THE COMMON INTEREST COMMUNITY STATUTES

SB 472 and HB 1219 amend several sections of the Virginia Code (54.1-2349, 55-79.93, 55-79.93:1, 55-516.1 and 55-530) and adds a new Section 55-79.93:2 to the Condominium Act. The most significant change is the addition of Section 55-79.93:2 of the Condominium Act, which provides that the Common Interest Community Board shall issue an order terminating the registration of the condominium in the event that all of the units in the condominium have been disposed of, and that all periods of conversion or expansion have expired. Section 55-79.93:2 of the Condominium Act also provides that the Common Interest Community Board may administratively terminate the registration of a condominium if (1) the declarant has not filed an annual report in accordance with Section 55-79.93 for three or more consecutive years, or (2) the declarant's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years. SB 472 and HB 1219 also amend Section 55-530 of the Virginia Code, which clarifies the duties of the Office of the Common Interest Community Ombudsman. The Office of the Common Interest Community Ombudsman is no longer authorized to provide nonbinding explanations of laws or regulations governing common interest communities or interpretations thereof by the Board. The Office of the Common Interest Community Ombudsman's role is limited to assisting members in understanding the rights and processes available under the laws and regulations and to providing referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing or resolving conflicts among associations and their members.

OTHER BILLS

Information Required in Articles of Amendment

HB 519 amends Section 13.1-888 of the Virginia Nonstock Corporation Act by providing that if an amendment to a corporation's articles of incorporation is adopted by the incorporators or the board of directors without member approval, the corporation must file a statement setting forth that the amendment was approved by the vote of at least two-thirds of the directors in office or by a majority of the incorporators and a statement setting forth why member and/or director approval was not required.

Definition of "State"

SB 50 amends Section 13.1-803 of the Virginia Nonstock Corporation Act. The bill amends the definition of "State" when referring to a part of the United States to include "a state, commonwealth, and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States."

Annual Meeting & Special Meetings

SB 50 also amends Sections 13.1-838 and 13.1-839 of the Virginia Nonstock Corporation Act by removing Section 13.1-838(C) and Section 13.1-839(E), which previously stated that members could participate in an annual and/or special meeting by use of any means of communication by which all members participating may simultaneously hear each other during the meeting if provided in the articles of incorporation or bylaws.

If you have any questions regarding any of these new changes to the Virginia Code, please do not hesitate to contact one of the attorneys in our Community Association department.