

# May 2013

## *Community Associations Newsletter*

### **2013 Virginia Legislative Update**

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Although the 2013 legislative session was relatively quiet, there were several significant changes to the Virginia Property Owners' Association Act and the Virginia Condominium Act. Unless otherwise noted below, the legislation addressed in this newsletter will take effect on July 1, 2013.

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

##### Lot Owner Permitted to Operate Home-Based Business

HB 2200 adds a new Section 55-513.2 to the POA. This bill provides that, except to the extent the declaration provides otherwise, an association cannot prohibit a lot owner from operating a home-based business within his personal residence. The bill, however, allows an association to establish reasonable restrictions as to the time, place and manner of the operation of the home-based business. This bill also allows an association to establish reasonable restrictions as to the size, place, duration and manner of the placement or display of any signs on the owner's lot related to the home-based business. This bill also requires any home-based business to comply with all applicable local ordinances. The Virginia Assembly noted that the bill serves the public interest by promoting Virginia's small businesses.

#### **AMENDMENTS TO THE CONDOMINIUM ACT**

##### Expansion of Declarant Control Period and Election of Warranty Review Committee

HB 2275 amends Sections 55-79.74 and 55-79.79 of the Condominium Act. The effective date of these amendments was March 20, 2013. The most significant change is the amendment to Section 55-79.74(B) of the Condominium Act, which allows a declarant to request

an extension of the declarant control period provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant. This bill provides that the time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interest in the common elements appertain have been conveyed, whichever occurs first. The bill provides that the declarant must furnish notice to the unit owner of the special meeting and provide a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant to (a) appoint and remove some or all of the officers of the association or its executive organ and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments or the Virginia Code. This bill requires that the written statement contain both a notice of the effect of the extension of the declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with Section 55-79.79 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest. This bill required the Common Interest Community Board to develop this disclosure statement within 30 days of the effective date of the act, which it has completed and which form is now available at the Common Interest Community Board website.

Another significant change is the addition of Section 55-79.79(D) of the Condominium Act, which sets forth the authority of the warranty review committee. Section 55-79.79(D) provides that the warranty review committee shall have (i) the irrevocable power as attorney-in-fact on behalf of the association to assert or settle in the name of the association any claims involving the declarant's warranty against structural defects with respect to all of the common elements, subject to the provisions of subdivision 3 and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to Section 55-79.83 if the committee determines that the assessments levied by the association are insufficient to enable the committee to reasonably perform its functions. The bill requires the association to provide sufficient funds reasonably necessary for the committee to perform its functions set forth in Section 55-79.79(D) and to (1) engage an independent architect, engineer, legal counsel, and such other experts as reasonably determined by the committee and (2) investigate whether there exists any breach of the warranty as to any of the common elements. This bill also authorizes the warranty review committee to assert or settle in the name of the association any claims involving the declarant's warranty on the common elements, provided (i) the committee sends the declarant, at least six months prior to the expiration of the statute of limitations, a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect within a reasonable time, and (ii) the declarant control period or the statute of limitations has not expired. This bill also requires the declarant to deliver to the chair of the committee, within 45 days of the formation of the committee, the following items: (i) a copy of

latest available approved plans and specifications for all improvements in the project or as-build plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing material and other similar materials if specified for use on the condominium property.

This bill also provides that for any condominium existing on July 1, 2013, the condominium instruments for such condominium may be amended in the manner prescribed in the relevant condominium instruments or by statute to conform to the provisions of this bill.

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

#### Imposition of Late Fees

HB 1595 amends Section 55-79.83 of the Condominium Act and adds a new Section 55-513.3 to the POA. This bill provides that, except to the extent that the governing documents or rules and regulations promulgated pursuant thereto provide otherwise, condominium associations and property owners associations may impose a late fee for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment. The bill states that the late fee imposed shall not exceed the penalty provided for in Section 58.1-3915 of the Virginia Code. Currently, Section 58.1-3915 of the Virginia Code provides for a maximum penalty of five percent. There is some concern that the courts will limit late fees to 5%, notwithstanding whether the recorded documents for the association provide for a higher late fee. We will report back to our clients on this issue after we receive decisions from the General District courts.

#### Notice to Owners of Election of Directors

HB 1711 amends Section 55-79.75 of the Condominium Act and Section 55-510 of the POA by requiring associations, in the event of the cancellation of any annual meeting at which members of the board of directors are elected, to include a statement that the meeting is scheduled for the express purpose of the election of directors in the seven-day notice of any subsequent meeting scheduled to elect such directors.

#### Disclosure of Qualification for Federal Financing

HB 1807 amends Section 55-79.97 of the Condominium Act and Section 55-509.5 of the POA. This bill provides that an association's disclosure packet for a purchaser must include a statement indicating any known project approvals currently in effect that have been issued by secondary mortgage market agencies.

### Restrictions on Solar Panels

HB 2305 amends Section 55-79.97 of the Condominium Act and Sections 55-509.5 and 509.10 of the POA. This bill provides that an association's disclosure packet for a purchaser must include a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on the owner's property.

In summary, much of the 2013 legislation has placed further restrictions on the ability of associations to operate, provided greater reporting burdens on associations, or provided greater protections to real estate developers to the detriment of associations and their members. We are hopeful that 2014 will result in more positive legislation for the benefit of our clients. If you have any questions regarding any of these new changes to the Virginia Code, please do not hesitate to contact any of the attorneys in our Community Associations department.