

# May 2014

## *Community Associations Newsletter*

### **VIRGINIA LEGISLATIVE UPDATE**

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**D**uring its session of 2013-2014, the General Assembly made several changes to the Property Owners' Association Act and the Condominium Act. The legislation addressed in this newsletter will take effect on July 1, 2014.

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

##### Purchaser's Right to Cancel Contract with Developer is Narrowed

The General Assembly has historically viewed the contractual relationship between a purchaser of a condominium unit and a developer as unequal, and, therefore, the law has for many years provided purchasers with 10 days to cancel their contract of purchase without penalty. Under pressure from the lobby for developers, the General Assembly reduced the number of days a purchaser has to cancel his/her contract to 5 calendar days from the date of the ratification of the contract or the date of the purchaser's

receipt of the current public offering statement, whichever is later. On the other hand, the law will now require developers to explain the purchaser's right to cancel the contract on the first page of the contract in boldface print of not less than 12 point type.

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

##### Associations must Comply with the Legal Documents

For many years, the Condominium and Property Owners Acts required owners to comply with the legal documents of the Association and further stated that if the owners did not do so, the Association could sue them in order to secure compliance and recover awards of damages and legal fees. Critics of the law complained that the law was one-sided and should also state the converse: that Boards are required to comply with the legal documents of the Association,

and if they do not do so, an owner can sue the Association in order to secure compliance and recover damages and legal fees. The General Assembly has responded to the criticism. The law will now say both.

#### The Amount of Time for Some Associations to Respond to Requests for Copies of Records has Increased

If your Association is self-managed, the number of days you have to provide a response to a member who has made a request for copies of records has increased from 5 to 10 days. The law will also require the requesting party to reasonably identify the purpose for the request and the specific documents he/she wishes to receive.

#### Imposition of Late Fees

In an effort to help community associations that did not have the power to impose late fees under their own governing documents, the General Assembly passed a law a year ago, but used language that was very convoluted and unclear. So, the General Assembly passed another law this session in an effort to fix the problems without changing the substance of the law. So, if your condominium association or property owners associations does not have the authority to impose a late fee expressed in your governing documents, the law permits your Board to levy a late fee on any assessment or installment thereof that is not

paid within 60 days of the due date for payment of such assessment and is no more than 5% of the assessment or installment.

#### Merger of Developments and Reformation of Declaration

HB 690 adds a new Section 55-79.71:2 to the Condominium Act. Section 55-79.71:2 of the Condominium Act creates a procedure to allow two or more condominiums to be merged or consolidated into a single condominium. In order to merge or consolidate the condominium, an agreement must be prepared, executed, recorded and certified by the principal officer of the association of each of the preexisting condominiums following approval of owners of units to which are allocated the percentage of votes in each condominium required to terminate the condominium. The agreement must provide for the reallocation of the allocated interest in the new association among the units of the resultant condominium. If mortgagee consent is required to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before the merger or consolidation shall be effective.

HB 690 also adds a new Section 55-79.73:2 to the Condominium Act, as well as a new Section 55-515.2:1 to the POA. The bill allows an association to petition the circuit court wherein the association is located to

reform the condominium instruments or declaration where the association has attempted to amend the condominium instruments or declaration regarding ownership of legal title of the common elements/common areas or real property to resolve (i) ambiguities or inconsistencies that are the source of legal and other disputes pertaining to legal rights and responsibility or (ii) scrivener's errors. If a petition is filed, the court shall have jurisdiction (1) to reform, in whole or in part, any provision of the condominium instruments or declaration and (2) to correct mistakes or any other error that may exist with respect to the condominium instruments or declaration for any other purpose. The petition shall be deemed sufficient provided that (1) the principle officer of the association signs an affidavit verified under oath that the association made three good faith attempts to convene a duly called meeting to present for consideration amendments to the condominium instruments and declaration and their attempts have proven unsuccessful, (2) there is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court, (3) the declarant joins the petition if the declarant still owns a lot or unit or other property, (4) the principal officer of the association signs an affidavit verified under oath that the association provided a copy of the petition to all owners and to all

mortgagees at least 30 days before the petition is filed.

#### Rule Enforcement

HB 791 amends Section 55-79.80:2 of the Condominium Act and Section 55-513 of the POA. The bill provides that an association may file or defend a legal action in general district or circuit court seeking relief, including injunctive, relief that arises out of any violation of the governing documents or rules and regulations duly adopted pursuant thereto. Before legal action can be taken, the association provides the owner a reasonable opportunity to correct the alleged violation after written notice of the violation is sent at the address required for notice of association meetings. The bill provides that if the violation is not corrected, the owner shall be given an opportunity to be heard and to be represented by counsel before the board or such other tribunal as the governing documents or rules duly adopted pursuant thereto specify. In the event of legal action, the bill provides that the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees.

In addition, HB 791 amended Section 16.1-106 of the Virginia Code to provide a right of appeal from general district court to circuit court in an action involving covenant or rule enforcement filed by an association or owner.

### Allowable Fees

HB 900 amends Sections 55-79.97 and 79.97:1 of the Condominium Act and Sections 55-509.3, 509.4 and 509.6 of the POA. This bill provides that nothing in either Act shall be construed to authorize an association or common interest community manager to charge an inspection fee unless specifically authorized in the Act. Furthermore, the bill prohibits an association or common interest community manager from charging additional fees for access to the association's or common interest community manager's website.

The bill also states that, if a resale certificate or disclosure packet is provided in electronic format, a total fee (not to exceed \$125) is

authorized for one electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. The bill also states that the purchaser may cancel the contract within three days after receiving the resale certificate if the resale certificate is delivered by a commercial overnight delivery service or the United Parcel Service and a receipt is obtained.

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 Association department.