

May 2015

Community Associations Newsletter

VIRGINIA LEGISLATIVE UPDATE

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During its 2015 legislative session, the General Assembly approved a number of Bills that the Governor signed into law that create changes to the Property Owners' Association Act and the Condominium Act. The legislation addressed in this newsletter will take effect on July 1, 2015.

AMENDMENTS TO THE CONDOMINIUM ACT ONLY

Right to Petition Court if No Quorum is Obtained

The General Assembly responded to complaints from condominium associations that historically have experienced difficulty obtaining quorum for membership meetings by passing a law that provides condominium associations with the option of filing a petition with the Court for a reduction of their quorum if: (i) no annual meeting has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and, (ii) the unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three (3) successive years that have been unsuccessful due to the failure to obtain a quorum.

Calculating Quorum

In another effort to make it easier for condominium unit owners associations to obtain quorum, the General Assembly passed HB 2055 to amend Sections 55-79.76 and 55-79.77 of the Condominium Act to eliminate those units that have had their voting rights suspended from the calculation for the following: (1) quorum; (2) the number of voting interests required to conduct an election; and (3), the number of voting interests required to approve an action.

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

House Bill 2100 –Governing Leasing, Permissible fees, and Resale Disclosure

Substantially similar to a 2008 amendment to the POA Act, House Bill 2100 adds §55-79.42:1 to the Condominium Act. The Bill provides that, unless otherwise authorized by law or the condominium instruments, an association may not impose any charge against unit owners unless it is (1) a regular or special assessment, (2) a charge related to the resale package, or (3) a fee for services provided to the owner by the association. Notably, the Common Interest Community Board can assess monetary penalties and issue cease and desist orders for violations of the statute, and the POA Act was amended to include this remedy as well.

House Bill 2100 also gave some attention to the often complicated relationship between associations, tenants, and landlords. The Bill prohibits associations from imposing a charge or otherwise conditioning or prohibiting an owner from the rental of his or her unit or lot (unless it is otherwise permitted by law or the association's legal documents). While an association may charge a rental fee since it is arguably a service provided to the owner, those fees are limited to \$50.00. House Bill 2100 also prohibits associations from requiring owners to use a lease prepared by the unit owners' association or requiring any sort of security deposit from either the owner or the tenant. However, the Bill does allow the association to require: (1) that the owner provide a copy of the lease; (2) that the owner provide the names and contact information for the tenants; and (3) that the unit owner require the tenant to acknowledge and consent to any rules and regulations of the association.

In what has become an annual rite of spring, House Bill 2100 also amended some of the provisions governing the resale process:

- If the resale certificate or disclosure package is provided by means of a hyperlink to a website, the link cannot expire in less than 90 days.
- For 12 months after the package has been provided, the Association may not impose any additional charges except for a \$50 update fee after expiration of the initial 90 day period.

- The seller or his agent may request an electronic copy be provided to the seller, the seller's agent, the purchaser, the purchaser's agent and one other person chosen by the person making the request.
- Settlement agents must now escrow sufficient funds to pay any resale package fees at settlement.

Workers' Compensation

HB 1285 amends the definition of employee within Virginia Workers' Compensation Act to exclude noncompensated employees, directors, and executive officers of property owners' association. As a result, associations are not required to carry workers' compensation insurance if they do not have compensated employees.

Notice of Sale Under Deed of Trust

HB 2080 amends both the Condominium Act and POA Act to provide associations with protection when a lender forecloses on a mortgage or deed of trust specifically, the Bill does the following:

- Provides that the terms "Unit Owner" and "Lot Owner" include a purchaser at a foreclosure sale regardless of whether the Deed is recorded in land records.
- Requires the lender to provide the association with written notice whenever a property is subject to a foreclosure sale under a deed of trust.
- Imposes a duty on the Board, upon receipt of such notice, to exercise "whatever due diligence it deems necessary" with respect to that unit/lot to protect the interests of the Association.

Statement of Owner's Rights

SB 1008 amends both the POA Act and Condominium Act (adding § 55-79.72:3 and § 55-509.3:1) to define certain rights possessed by all owners. Those rights are:

- Right of access to association books and records (subject to withholding provisions of Condo and POA Acts).
- Right to cast vote in accordance with ownership interest (except as provided otherwise in the condominium instruments or declaration).
- Right to notice of board meetings, and to record (audio or video) and participate in board meetings (owner comment period).
- Right to (i) notice of any proceeding of board or other tribunal (specified in governing documents) against owner to enforce the rules and regulations; (ii) opportunity to be heard/ represented by counsel at proceeding; (iii) due process in conduct of hearing, and
- Right to serve on the board (if duly elected and a member in good standing, except to the extent that governing documents provide otherwise)

It is important to note that the above rights already existed in both statutes prior to passage of SB 1008. As a result, these amendments do not create any new owner rights or impose any new duties upon associations.

AMENDMENTS AFFECTING PROPERTY OWNERS' ASSOCIATIONS ONLY

Best Practices in Drafting POA Declarations

HB 1632 amended Section 54.1-2349 of the Virginia Code to require the Common Interest Community Board develop and publish best practices for the content of declarations consistent with the requirements of the POA Act. This amendment will provide guidance to developer's attorneys drafting POA documents, but should not pertain to existing associations.

AMENDMENTS TO THE NONSTOCK CORPORATION ACT

HB 1878 amends the Nonstock Corporation Act to do the following:

- Allows a member to consent to a corporate action at a future time.
- Consent must be in writing
- The person must be a member at the time the consent is effective.
- The person has not revoked the consent

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.