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* * * LEGAL UPDATE * * *
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The information presented is not intended as specific legal advice to any Association as your documents or the specific facts of your situation may require a different result. The laws cited herein may change from time to time.

I. Virginia Legislation. The following laws have been passed and go into effect on July 1, 1997, except as noted. The text of all amendments is available by calling our office.

A. Condominiums, Cooperatives and Property Owners' Associations.

House Joint Resolution 515. The Virginia Real Estate Board was asked to establish an advisory committee to oversee the administration of the **Common Interest Community Management Information Fund** which was established in 1993 to promote the improvement and more efficient operation of common interest communities and to serve as a clearinghouse for information related to association living.

IMPORTANT CHANGE

House Bill 2259. Resale Certificates and Disclosure Packets. Condominium, Cooperatives and Property Owners' Associations. Sections 55-79.97, 55-484, 55-512 and 55-530. The Section regarding the Common Ownership Interest Fund has been amended to require the Virginia Real Estate Board to issue a certificate of registration to each association registered, showing the date of registration and the registration number assigned to the association. **BY JULY 1, 1997, EVERY ASSOCIATION MUST amend its resale certificate or disclosure packet to add a new section stating that the following is included in the packet, "A copy of the certificate showing that the association has filed the annual report required by the Virginia Real Estate Board".** The certificate must indicate the registration number and date of registration with the agency. The VREB informed us that they will send out a statement before July 1, 1997, to each Association that has filed its report and paid its \$25 fee for this year so that the statement can be copied and placed in the resale certificate or disclosure packet. For report and fee filings after July 1, 1997, the VREB will send a grey license card to each Association that files as required. That card can then be copied and placed in the resale certificate or disclosure packet. If for some reason Associations do not receive the statement by July 1, 1997, we recommend that you note in the packet or certificate that the VREB certificate has not been received to date and include a copy of your annual report, including the registration number, date filed and a copy of a canceled check or statement that the fee was paid.

Section 55-530 was also amended to add that the Common Ownership Interest Fund, created by the payment of the \$25.00 registration fee, may be used to promote seminars and educational programs designed to address topics of concern to community associations.

House Bill 2565 and 2800 and Senate Bill 1135. Condominium (Section 55-79.84) and Property Owners' Associations (Section 55-516). Nonjudicial Foreclosures Authorized!!!! This provision, which has been sought in many previous sessions of the legislature, has finally passed. Unfortunately, the super lien priority for association liens over mortgage liens did not pass. After July 1, 1997, the foreclosure statute will allow associations to foreclose on delinquent owners for their association assessment by advertisement in a newspaper in a similar manner to mortgage companies, rather than having to file a suit in the Circuit Court and go through much longer and more expensive judicial procedures that are now required. The procedure will require notice in a newspaper of general circulation once a week for four successive weeks or, in some locations, for five consecutive days, sending a copy of the advertisement to the owner by certified mail and to lien holders and assignees by regular mail 14 days before the sale, and holding the sale no earlier than 8 days after the first advertisement or more than 30 days after the last advertisement. The statute sets out the requirements for the notice, bidding requirements and application of proceeds. Other members of the association are not permitted to bid at the foreclosure sale but any one can submit a written bid prior to the sale for announcement at the sale. The Association's liens will be paid after the expenses of sale, taxes, levies and assessments and prior to inferior liens. The statute provides that the property would be subject to the lien of any first deed of trust which is filed before the association's liens, which will be true unless the foreclosure proceeds are sufficient to pay off the first trust also.

While this new statute will be very beneficial, some associations may wish to consider proceeding with the traditional judicial foreclosure sale because of some procedural questions and possible challenges to the foreclosure sale under the statutory method. In recent cases, associations have been successful in having the court prevent a foreclosure by a first deed of trust holder and requiring the first trust holder to pay the association's expenses before a foreclosure is allowed to proceed. The judicial method also allows the property to be sold free and clear of the first deed of trust within the discretion of the commissioner. Selling through a Realtor or a commissioner of sale may also bring a higher price than the statutory foreclosure method. Future amendments or case law may resolve these issues.

House Bill 2565 also amends two other sections which will become effective on July 1, 1997. **Section 55-511 and 55-512** regarding disclosure rights at the time of sale conferred by the Property Owners' Association Act, which currently may be waived in writing in a separate document, will no longer be allowed to be waived after July 1, 1997. A **new Section 55-515.1** was added to allow for automatic approval by mortgagees of amendments to the Declaration if a copy of the amendment is sent and no response is received within 90 days. Automatic approval does not apply for amendments affecting the mortgagees' lien priority, collateral or right to foreclose on a lot.

House Bill 2801 and Senate Bill 1134. Condominium and POA Association Assessments - Suspension of nonessential utility services for nonpayment. Section 55-79.80:2 and Section 55-513. As long as notice and an opportunity for a hearing are provided, when an owner is more than 60 days delinquent, utility services provided directly through the Association may be suspended, provided that the suspension does not endanger the health, safety, or property of any unit owner, tenant, or occupant. This ability may be useful in the case of a vacant unit or lot, however, shutting off water, heat or electricity to an occupied unit might cause sanitation, health or fire risks that would not be permitted under this statute. **Please note that this amendment also may prohibit suspension of other rights, such as pool use or parking privileges until there is a 60 day delinquency unless the Association's documents or rules specifically authorize an earlier suspension.** Association's should review their current suspension policies for compliance with the new statute.

B. Corporate Filing Dates for all Incorporated Associations.

IMPORTANT CHANGE

House Bill 2109. Annual Registration Fees and Annual Reports. Section 13.1-914, 13.1-936, 13.1-936.1. Currently all corporations must file their Annual Report and Registration Fee with the State Corporation Commission by April 1st of each year. Effective January 1, 1998, sections of the Nonstock Corporation Act were amended to provide that the new annual due date for filing will be the end of the month of incorporation unless otherwise determined by the Commission. Other related deadlines were changed to expire four months after the due date. For example, whereas currently the report and fee are due on April 1st and a corporation will automatically be dissolved if the report or fee is not filed by September 1st, after January 1, 1998, the fee will be due at the end of the month in which the association is incorporated and the corporate existence will expire four months thereafter if the report or fee is not filed. When the new law goes into effect, if more than 12 months elapse from the filing of the 1997 annual report, the annual fee will be prorated. The purpose of this legislation appears to be to avoid the deluge of annual report and fee filings in April of each year and to spread out the filing requirements over the year.

C. Other Laws affecting Community Associations.

House Bill 1648. Service of Process by Sheriffs. Section 8.01-293. Service of process has been limited to provide that instead of service by a private process server only a sheriff may (i) levy on property, (ii) execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession, arising out of an action in unlawful entry and detainer or ejectment, of (iii) serve any capias or criminal show cause order. This law codifies current practice and should not have any major effect.

House Bill 1997. Insurance; notice of intention to rely on certain defenses. Section 38.2-2226. This law establishes 45 days as the deadline for an insurer's notification of its intention to rely on a

defense based on the insured's breach of contract, such as failure to give timely notice. This extends the deadline from 20 days and provides that failure to give timely notice of a defense will result in a waiver of that defense.

House Bill 2257. Release of deed of trust or other lien. Section 55-66.3. This law increases the penalty for failing to release a lien that has been paid within 90 days of satisfaction from \$300 to \$500. The law currently provides for the lien creditor to pay any costs and attorneys' fees incurred if the penalty is not paid within 10 days. It will be even more important to return those signed Certificates of Release of Lien promptly.

House Bill 2321. Service upon a corporation. Section 8.01-513. With regard to garnishments, the law has been changed so that service of a garnishment summons can no longer be made on an officer or managing employee of the corporation. The law, effective July 1st, requires that a garnishment summons be served on the registered agent of the corporation or upon the clerk of the State Corporation Commission.

House Bill 2467. General District Courts; civil jurisdiction. Section 16.1-77. It is good news that the jurisdictional limit of the General District Court has been increased from \$10,000 to \$15,000. The General District Court offers a more expedited, less expensive forum than the Circuit Court.

House Bill 2646. Prohibition Against Parking Commercial Vehicles on County Highways. As a County with a population greater than 500,000, this statute will apply to Fairfax County. **Section 46.2-1224** of the Virginia Code allows counties with a population of more than 500,000 to enact ordinances prohibiting the parking of commercial vehicles on highways in the County in residential areas. Presently the statute allowed such regulations regarding parking on or adjacent to highways. The amendment will only apply to parking on such highways. The definition of commercial vehicle was spelled out rather than referring to another section which defines commercial vehicles. The statute also created a requirement that the County ordinance permit one resident of each single-family dwelling to park one vehicle licensed as a taxicab or limousine on such streets where street parking is allowed.

II. FCC regulations on satellite dishes. The promised rules regarding satellite dishes on condominium limited common elements were expected to be published in April 1997, but they have not been published as of the date of printing of this "Legal Update". We will continue to monitor the status of the rules.