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*** * * LEGAL UPDATE * * ***

VOLUME 8, NUMBER 1

June 1998

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.

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I. VIRGINIA LEGISLATION. This was a very busy legislative session for community associations with many technical changes and **some important changes that require action on your part before July 1, 1998.** Except for an advantageous law regarding service of process of garnishments on corporations, which became effective on April 16, 1998, the following legislation will become law on July 1, 1998.

A. CHANGES REQUIRED IN RESALE CERTIFICATES AND DISCLOSURE PACKETS ON JULY 1ST, 1998. Provisions of the Property Owners' Association Act (55-512) and the Condominium Act (55-79.97) were made consistent with each other which will require some rewording of the language used for both. Copies of each of the sections follow at the end of this newsletter for Virginia associations. The required time period for providing the disclosure statements is now 14 days for both associations. There is an important change regarding statements about anticipated expenditures. Instead of including "anticipated" expenditures within the next 2 years, the statute will only require a statement about any expenditure of funds approved by the association or the Board which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year. The reference to the registration number with the Real Estate Board has now been changed to a filing number. Although we have previously recommended that architectural guidelines be included along with the Bylaws, the statute will now require them to be included with the resale disclosure statements. Even though not required, we still recommend that the Declaration also be included. A fee reflecting the actual cost not to exceed \$50 for a POA and \$100 for a Condominium may be required for providing assurances that there have been no material changes to resale disclosure packets issued more than 6 months ago and the statement must be provided within 10 days of a request.

The liability and waiver section of the POA Act has also been added to the Condominium Act so that if an association doesn't respond, enforcement of assessments and rules violation as to the purchaser may be waived (lost) by the association. A limitation of liability of \$500 applies to the association for damages to the seller. The purchaser is still obligated to comply with all assessments and guidelines subsequent to the sale or others that may be recorded in the Declaration. The conveyances for which resale certificates are not required was made the same as in the POA Act: dispositions by gift, court order, foreclosure, and to a person not acquiring

the unit for his own residence.

POAs need to add the additional insurance that would normally be obtained by each lot owner and both POAs and Condominiums need to add reference to fidelity bond coverage. In POAs, the notice requirement has been eliminated as to violations on the lot so that a statement can simply be included in the disclosure packet if there are any violations.

Condominiums have an additional requirement now. They must indicate if there are any occupancy restrictions on the units. This is not a requirement for POAs.

B. Condominium & POA Legislation. The time limit within which mortgagees may consent to amendments to the Bylaws in Condominiums (55-79.73:1) and the Declaration in POAs (55-515.1) has been reduced from 90 days to 60 days. If there is no response, consent will be deemed to have been given. Note that the Condominium Act does not allow mortgagee consent to amendments to the Declaration by this method.

C. Condominium Legislation. There will be specific language allowing limited common elements to be changed back to common elements. Section 55-79.77 D of the Condominium Act was changed to eliminate the requirement that proxies terminate after any recess held within 30 days of the meeting so that proxies may be valid for longer time periods, not to exceed the 11 month limit in the Nonstock Corporation Act for incorporated associations, unless otherwise provided for in the proxy. The limitation on occupancy section which was added last year (55-79.80:3) was amended to eliminate the condition that occupancy limits be no more restrictive than the local zoning ordinance. Limits need only be reasonable. This is a good amendment, but associations will have to be careful to avoid discrimination against families.

D. Property Owners' Association Legislation. A new section 55-515.2 has been added regarding the applicability of certain legal doctrines to declarations that are too legalistic and boring to discuss here. However, this amendment now provides authority for corrective amendments by a 2/3rds vote of the board.

The special assessment section (55-514) has been broadened to allow boards to levy assessments for not only maintenance and upkeep of the common areas, but now also for "other areas of association responsibility expressly provided for in the declaration, including capital expenditures". This was added to help some associations in the Richmond area where they are charged with the responsibility of maintaining roofs and yards that are part of the lots. It may also help other associations charged with maintenance of areas that are not technically part of the common areas, such as roads, storm sewers or easements over lots.

E. Bills Vetoed. Two bills were vetoed. One would have put a limit on the amount collected by the Common Ownership Interest Fund and the other was a POA Act section that would have allowed associations to opt in to amendments of the declaration by 2/3rds of the members and would have put a limit of 1 year on challenges to amendments as currently exists in the Condominium Act.

F. Cooperatives. Writs of possession following a judgment for nonpayment of rent in an unlawful detainer case may now be issued immediately rather than having to wait 10 days. Note that service of unlawful detainers after July 1st will have to be made at the tenant's last known address instead of at the apartment if you know that the tenant has moved to some other location. Rules regarding disposal of a tenant's property abandoned on the premises have also been relaxed, but are still subject to the Unclaimed Disposition of

Property law.

G. Other Virginia Laws and Cases affecting Community Associations.

- * The subdivided land sales act under which some associations were created before 1989 will be superceded by the POA Act.
- * Service of process fees for the Secretary of the Commonwealth (used for out-of-state defendants) will go up from \$15 to \$19 on July 1st.
- * The exclusive original jurisdictional limit for cases in the General District Court will be raised from \$1000 to \$3000 and concurrent jurisdiction with the Circuit Court will start at \$3000 instead of \$1000 so that fewer cases may be removed to the Circuit Court, allowing for quicker resolution.
- * The small claims court has proven to be a success in Fairfax, Arlington and Stafford and they have been allowed to continue. All courts will be required to establish a small claims court by July 1, 1999, using existing facilities. Small claims courts hear cases without attorneys involving amounts under \$1000.

H. Fairfax County Code Amendments. You may have heard about the monkey that was being trained to assist a disabled person. The monkey's owner was in violation of law for keeping a wild or exotic animal. The law was changed as of December 8, 1997, to exempt from the prohibition "Certified service animals" which includes "a monkey that is used or is in training to be used to assist disabled persons and which use is certified by officials of a generally recognized scientific or educational institution, provided that such certified service animal has been bred in a closed breeding environment located in the United States".

An amendment to the Fire Prevention Code became effective on November 24, 1997, which requires that in water based extinguishing systems all standpipe fire lines shall be tested at least every 5 years and shall meet the flow demands required at the time of installation or as otherwise required by law. All control valves must be tested at the time of the test to ensure proper operation. This may increase your testing costs.

II. MARYLAND LEGISLATION. The following Bills were considered this legislative session in Maryland. Those that were passed will become effective on October 1, 1998:

Condominium Liens Priority SB 428: This Bill would have provided that a portion of a lien on a condominium unit would have priority over the claim of the holder of a first mortgage or deed of trust under certain conditions.

Result: This Bill was defeated as in previous years. It is fairly certain that it will be introduced again next year when hope of passage may be somewhat improved.

Priority of Homeowner Association Liens SB 202: This Bill would have provided that lot owners within homeowner associations are liable for specific charges and assessments; allowing homeowner associations to enforce the payment of specific assessments and charges by imposition of a contract lien under certain circumstances; and would have provided that a specified portion of a homeowner association contract lien has priority over a first mortgage or deed of trust under certain circumstances.

Result: This Bill was defeated.

Homeowners Bill of Rights SB 18 and HB 38: These Bills authorize condominium unit owners and homeowners association lot owners to meet in specified areas, subject to reasonable rules, to consider and discuss matters relating to the operation of the condominium or homeowners association; require bodies and committees of condominium and homeowners associations to allow unit owners or property owners to comment on specified matters during meetings, subject to rules; and authorize unit and lot owners to distribute information in specified places and ways.

Result: Both Bills were passed.

No-Impact Home Based Business SB 94: This Bill prohibits a no-business provision in a recorded covenant or restriction, declaration, bylaw or rule of a condominium or homeowner association, or in the articles of incorporation, bylaws, or proprietary lease of a cooperative housing cooperation from being construed to prohibit certain no-impact home-based businesses; and provides that a condominium, homeowner association, or cooperative housing corporation may restrict or prohibit certain no-impact home-based businesses under specific circumstances.

Result: This Bill was passed. HB 44 with substantially the same provisions was defeated.

Political Signs HB 36: This Bill provides that a condominium, homeowner association, or cooperative housing corporation may not prohibit or restrict a resident from displaying certain political signs, except under specific circumstances; and generally relate to political expression in condominiums, homeowner associations, and cooperative housing corporations.

Result: This Bill was passed.

III. Virginia Collections - Soldiers and Sailors Affidavits. In the process of collecting delinquent assessments, our attorneys and paralegals are constantly monitoring changes in the law and procedures required by the courts. One change we made recently is the filing of a separate Soldiers and Sailors Affidavit with a Warrant In Debt instead of simply including a sentence in the body of the affidavit of the amount owed.

The position recently adopted by all of the United States Armed Services is that creditors are not entitled to garnish a debtor's wages if the debtor is a member of the armed forces unless the member is served with a separate Soldiers and Sailors Affidavit with the Warrant in Debt prior to the judgment being entered against the debtor. The affidavit and statement of account allow us to obtain a judgment without a witness, such as the treasurer or management agent, to verify the account and the amount owed, unless the amount is contested.

By filing all suits with an Affidavit, Statement of Account, and the Soldiers and Sailors Affidavit, we maximize our clients' ability to obtain judgments and also to collect on them. The Soldiers and Sailors Affidavit eliminates another defense that the defendant could use to avoid making payment to the association.

IV. FCC regulations on satellite dishes. The regulations have not changed since our previous newsletters on this topic. However, the hearings that have been held on the regulations have generally been decided in favor of homeowners. Owners in homeowner associations may place satellite dishes under one meter in size anywhere on their lots. Condominium owners may place dishes on a limited common element, such as a

balcony or patio, but not on the common elements. In one of the rare cases where the FCC ruled in favor of an association, the FCC ruled against an owner who tried to attach an extension from his unit to allow his dish to reach above the roof line. The FCC recognized that the air space beyond the confines of the unit boundaries are common elements and therefore, the owner had no right to seize that space for his dish and extension. Generally, few restrictions can be imposed and delays in approval, screening requirements or placement requirements are not viewed favorably by the FCC. Associations are advised to let owners know in advance what placement requirements may be preferred, that owners are asked to order dishes that blend into the background or otherwise are screened from view and that owners may not put dishes on common areas or common elements. The FCC holdings put the burden of proof on the association as to whether reception may be sufficient from a preferred location.

V. Replacement required of certain Omega Sprinkler Heads. If you live in a multi-family dwelling built after January 1, 1993, when the BOCA Code was changed to require water-based sprinklers in residential dwellings, and your home has certain types of Omega sprinklers, you may be required by the local fire marshal to replace your sprinklers or at least test them through certain approved laboratories or procedures. Testing is recommended to preserve your rights against the manufacturer. The Consumer Product Safety Commission is attempting to require a recall. However, due to high failure rates the fire marshals have already been authorized in Virginia to require their removal. The O-rings in the sprinklers allegedly were contaminated with oil either in the manufacturing or installation process. As a result, they fail to trigger water when a fire occurs. If your association may have this type of sprinkler and you need additional information, please call us. We can provide you with a packet of information or advice based on your jurisdiction's requirements.