



## ***THE SPECIAL ASSESSMENT***

### VIRGINIA LEGISLATIVE UPDATE

*New and amended statutes affecting community associations are going into effect on July 1, 2011.*

*Please contact our office to see how these changes may affect your association.*

During its 2011 legislative session, the Virginia General Assembly adopted new statutes and amended existing statutes that may affect community associations. The new and amended statutes will go into effect on July 1, 2011 (unless otherwise noted).

One major change this year is the expanded jurisdiction of the general district courts, which now have much more authority regarding community associations than in the past. Other amendments affect Common Interest Community Board (CICB) licensing and employee certification. A further change is that as of July 1, 2012, associations will have to provide a cost schedule for providing member-requested copies of books and records.

In addition, there are some procedural changes for disclosure packets and resale certificates and a new statute requiring the posting of signs regarding pesticide applications in property owners' associations, as already required for condominiums. There is also new legislation regarding transfer fee covenants, ABC banquet license requirements, continued im-



munity for directors and officers, and parking in Hanover County. A more detailed explanation of each of the legislative changes is presented below.

The full text of amendments and the Code of Virginia, including all provisions of the Nonstock Act (Title 13.1, Chapter 10) can be found at <http://legis.state.va.us>. The following notes are summaries of the main revisions to the statutes and are not intended to constitute legal advice.

A copy of our 2011 edition of the Virginia Statutes reference book can be found on our website at [www.chadwickwashington.com](http://www.chadwickwashington.com).

***ADVERTISING MATERIAL***

### General District Court Jurisdiction

Commencing on July 1, 2011, the general district courts may order a violating owner to abate or remedy a violation and may enter a default judgment against a violating owner based on the association's sworn affidavit under Section 55-79.80:2 of the Condominium Act or Section 55-513 of the Property Owners' Association Act. In addition the maximum civil jurisdictional limit of the general district courts is raised from \$15,000 to \$25,000.



### Common Interest Community Board (“CICB”)

The General Assembly has extended the deadline by which certain employees of common interest community managers must hold a CICB certificate to July 2012. The expiration deadline for provisional licenses is now June 30, 2012. The CICB is now also authorized to approve, for certification purposes, training programs sponsored by the Virginia Association of Realtors or other organizations. There are also clarified bonding/insurance requirements under Va. Code § 54.1-2347 for compensated association residents (exempt from CICB licensing requirements) who provide bookkeeping, billing, and record keeping services for common interest communities. Under Va. Code § 54.1-2353, court-appointed receivers in CICB enforcement actions may be paid from the Common Interest Community Management Recovery Fund. Note that most of these amendments became effective on March 25, 2011.

Under Section 55-79.89 of the Condominium Act, the CICB is appointed to receive service of process when a declarant/applicant is not a resident of Virginia. Sections 55-79.90, 55-79.98, and 55-79.99 of the Condominium Act contain technical amendments.

### Disclosure Packets/Resale Certificates

Amendments to Section 55-509.6 of the Property Owners' Association Act or Section 55-79.97:1 of the Condominium Act and have reduced from 90 days to 45 days the time period that condominiums and professionally managed property owners' associations must wait before assessing the resale fee against the unit or lot owner. Also, associations must assess unpaid fees within one year after delivery of the disclosure packet.

Section 55-79.97 of the Condominium Act now includes a buyer's right to cancel a contract after being notified that the resale certificate is not available and defines the circumstances under which the certificate is deemed to be not available. It also provides an additional exception to the types of transfers that do not require the seller to provide a disclosure packet. This new exception is for disposition of a unit by sale at auction when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction. This amended language is similar to language that had been previously added to the Property Owners' Association Act (the “POA Act”).

For condominiums and property owners' associations that are professionally managed, Section 55-509.6 and Section 55-79.97:1 include a new requirement that a disclosure packet must specifically state that the fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment if not paid at settlement or within 45 days of the disclosure packet, whichever is first. Section 55-509.3 of the POA Act was amended to add language that clarifies an association's authority to impose a charge on a lot owner, including statutorily-permissible charges related to disclosure packets.

### **Transfer Fee Covenants**

Under new Va. Code § 55-70.2, transfer fee covenants that were recorded on or after July 1, 2011 will not run with the title to real property and will not be enforceable against subsequent owners. A transfer fee covenant is a provision in a recorded document requiring payment of fees to real estate developers or other private parties if the property is transferred in the future. This will only affect newly recorded covenants, so existing transfer fee covenants may still apply. This law does not affect requirements to pay transfer fees to owners associations in common interest communities.

### **Access to Association Books and Records**

As of July 1, 2012, charges for providing copies of association books and records under Va. Code § 55-510 and Va. Code § 55-79.74:1 may only be imposed in accordance with a cost schedule that is adopted by the board of directors. The cost schedule must specify the charges for materials and labor and apply equally to all members in good standing. The cost schedule must be provided to any requesting member in good standing when they make the request. The Legislature also corrected a typographical error in Section 55-79.74:1 that referred to a provision of the Property Owners' Association Act.

### **Alcohol and Beverage Control Board and Common Facilities**

Common interest communities will now be exempt from the ABC Banquet License requirement for private meetings and private parties that are limited to attendance by association members and their guests if they meet the following conditions: (1) the alcoholic beverages are not sold or charged for in any way; (2) the premises where alcohol is consumed is limited to the common area regularly used for such private meetings or parties; and (3) the meetings or parties are not open to the public.

### **Pesticide Application**

Under new Section 55-510.3 of the Property Owners' Association Act, associations must now post notice of all pesticide applications in or upon common areas at least 48 hours prior to application. Note that these requirements already exist under Section 55-79.80:01 of the Virginia Condominium Act.

### **Immunity of Association Officers and Directors**

Sections 13-870.1 and 13-870.2 of the Nonstock Corporation Act now provide that the immunity from civil liability that directors and officers enjoy in their official capacities will survive the termination, cancellation, or other discontinuance of a community association.

### **Hanover County Parking**

Amended Va. Code § 46.2-1222.1 grants Hanover County the same powers to regulate vehicular parking presently granted to the Counties of Arlington, Fairfax, Stafford, and Prince William and the Towns of Clifton, Herndon, and Vienna.



The information contained in this publication should not be acted or relied upon without specific legal advice based on particular fact situations.

Should further analysis or explanation of the subject matter be required, please contact Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.

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