



2018 Virginia Legislative Update

By: Allen Warren

Each year, before and during the Virginia General Assembly's legislative session, community association volunteer leaders must keep a watchful eye on legislative bills submitted for consideration by our state senators and delegates. Often, these bills are submitted to address some perceived injustice that may have occurred in a particular association, and would do more harm than good, providing a legislative "fix" for something that either did not need to be fixed or that should not be addressed as a "one-size-fits-all" statutory mandate. As a consequence, it is critical for community association leaders to communicate with their State legislators early and often to help them better understand and appreciate what community associations do, the difficulties experienced by volunteer board members, and how they should value local, community-based governance rather than imposing a seemingly ever-increasing number of state statutory mandates and restrictions on associations and their boards.

During this year's General Assembly regular session, approximately 1,833 bills passed the House and Senate out of just over 3,700 bills that were introduced this year. After first mentioning some bills that were introduced but failed to pass, this article will address enacted legislation that directly impacts community associations. These include amended statutory provisions dealing with the withholding of confidential records from owners, revised resale cover sheet requirements, new prerequisites for charging resale disclosure fees, and new resale disclosure fee options for property owners' association that are not professionally managed.

The newly enacted pieces of legislation referenced below have been signed by the Governor and will take effect on July 1st of this year. For those interested in knowing which elected officials introduced or sponsored the legislation, the patrons (or chief patrons) of the bills are designated next to the subject heading. If you appreciate (or do not appreciate) the impact that particular legislation would have on your community association, we encourage you to contact your elected state delegate or senator to make your point-of-view known.

Bills Introduced but not Enacted

Before addressing legislation that was actually enacted into law this year, below are just a sampling of various bills introduced this year, which to varying degrees, would have interfered with effective governance, deterred or prohibited widely-accepted best practices, and further deteriorated the fundamental self-governance principles of community associations. As is the case with any type of organization, industry or business (or governmental body for that matter), there will inevitably be some bad apples in the bunch. However, does this really justify some of our elected representatives in Richmond continuing to vilify community associations with their broad-brush condemnations and proposed one-size-fits-all government mandates? It is important to keep in mind that community associations are often mandated by local government zoning ordinances or policies, and perform many of the same functions that local governments historically have performed – such as providing for recreational facilities, maintaining streets, and helping to maintain property values through property maintenance standards, building standards, and nuisance abatement. Unlike local and state governments, however, community associations require dedicated volunteers to lead their organization, under a fiduciary duty, in what can sometimes be a thankless task, and must do so without the benefit of governmental sovereign immunity.

Here are just a few of the bills introduced this year targeting community associations that were **not enacted**:

- House Bill 722 [*Delegate Plum (D) - House District 36*] would have **prohibited** boards of directors of property owners' associations from taking an “**action without a meeting**” through unanimous written consent as allowed under the Nonstock Corporation Act and most associations' bylaws.
 - House Bill 1039 [*Delegate Convirs-Fowler (D) - House District 21*] would have **prohibited** incorporated associations (and all other nonstock corporations) from using **uninstructed proxy forms** for elections, making it even more difficult to collect proxies, obtain quorum, and run effective meetings and elections.
 - House Bill 1040 [*Delegate Convirs-Fowler (D) - House District 21*] would have required associations to **make decisions on resident complaints within 30 days** after receipt of a complaint under the CICB-mandated complaint process, favoring quick decisions over correct decisions.
 - House Bill 1123 [*Delegate Convirs-Fowler (D) - House District 21; Delegate Simon (D) - House District 53*] would have required **board and committee meeting minutes to include a summary of all discussions and speakers' presentations** (or be supplemented by audio/video recordings), contradicting widely-accepted best practices for minute-taking, which focus on documenting motions, resolutions and other actions taken rather than details about specific comments.
 - House Bill 1122 [*Delegate Convirs-Fowler (D) - House District 21*] would have mandated that property owners' associations **keep a record of all owners' phone numbers and email addresses**, and keeping **all correspondence between management or board members and association members**, which would have ignored justifiable privacy concerns of homeowners and unnecessarily increased associations' record-keeping burden.
 - Senate Bill 707 [*Senator Surovell (D) - Senate District 36*] would have required associations to **allow a home-based business** within a dwelling unless expressly prohibited by the declaration of covenants, making it even harder for associations to preserve and protect the intended residential character of their communities.
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Enacted Legislation Effective July 1, 2018

CICB/DPOR Cover Sheet for Resale Certificates and Disclosure Packets – House Bill 923 [Delegate David L. Bulova (D) - House District 37]

This legislation requires the CICB to revise the CICB Disclosure Form that accompanies disclosure packets issued by property owners' associations. The legislation also requires the CICB to create a new similar Disclosure Form to accompany condominium resale certificates.

These forms are revised primarily to provide potential purchasers with additional information regarding use restrictions to which the purchaser may be subject as member of an association and that might affect the purchaser's decision to purchase in a common interest community. Examples of such possible restrictions include limits on leasing rights, parking of certain vehicles, keeping of pets and similar restrictions. The Disclosure Forms expressly provide that they are meant to be *summaries* of select matters to consider when purchasing a unit or lot and should not be relied upon to understand the full nature of the restrictions. The purchaser remains responsible for carefully reviewing and examining *all* contents of the disclosure packets and resale certificates.

These forms are posted on the CICB website (links below) and are required effective July 1, 2018:

[Disclosure Packet Form \(POAs/HOAs\)](#) [Resale Certificate Form \(Condominium\)](#)

Fees for Resale Disclosure Packets – Professionally Managed and Non-Professionally Managed POAs

[Delegates Vivian E. Watts (D) - House District 39; Debra H. Rodman (D) - House District 73]

This legislation amends the Property Owners' Association Act (§§55-509.6 and 55-509.7) to provide additional incentives for associations to register and remain in good standing with the CICB, and to provide non-professionally managed associations a way to start charging the same type of resale disclosure fees that professionally-managed associations have been able to charge for several years.

Effective July 1st, a *professionally-managed* property owners' association ("POA") will not be able to charge fees for the preparation and delivery of resale disclosure packets unless the POA: (i) is registered with the CICB; (ii) is current in filing annual reports and paying annual fees to the CICB; and (iii) provides the disclosure packet electronically when requested to be in that format. A *non-professionally managed* POA must also be registered and in good standing with the CICB before allowed to charge resale packet fees, but are not required to provide packets electronically.

Effective July 1st, *non-professionally managed* POAs will have the option of charging additional fees when certain extra services are requested by the seller or seller's agent. These include: (i) up to \$50 for expediting the preparation and delivery of the disclosure packet, if completed within 5 business days of the request; (ii) up to \$25 for a requested additional hard copy of the packet; and (iii) the actual cost incurred to use a requested third-party commercial delivery service. In addition, a *non-professionally managed* POA can entirely opt into the fee structure for professionally-managed associations, including charging fees for *inspection* of the property and *other disclosure packet-related services* but only if the association: (i) provides the packet electronically if requested by the requester; and (ii) complies with the other requirements imposed on professionally-managed associations under § 55-509.6 (such as collecting the resale fees at settlement or within 60 days after delivery of the packer, rather than collecting the fee at the time of delivery).

Owner Access to Association Records: Redaction of Confidential Portions

[Senator Surovell (D) - Senate District 36]

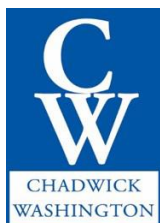
This legislation amends both the Condominium Act and the POA Act (§§55-79.74:1 and 55-510), by providing that requested books and records can be withheld from inspection/copying in their entirety only if an exclusion from disclosure specified in the Condo Act (or POA Act) applies to the entire content of the particular requested book or record. Otherwise, only those portions that contain confidential information may be withheld (*i.e.*, redacted), and all nonconfidential portions must be disclosed at the requesting member's expense. Note that the legislation states that the requesting member can be required to pay the extra "reasonable costs" incurred by the association in reviewing the records for redaction.

2018 Legislative Update "To-Do" List

Consider taking the following actions related to the new or amended laws that take effect on July 1, 2018:

- ✓ *For condominiums and property owners' associations*, obtain the applicable updated version of the **CICB's revised Disclosure Notice**, and then update your resale disclosure materials to include the applicable notice form.
- ✓ *For condominiums and property owners' associations*, be sure that your association is **registered and in good standing with the CICB**. If not, no resale disclosure fees can be collected.
- ✓ *For non-professionally managed property owners' associations*, the board should **decide whether**, or to what extent, to **start implementing different or additional resale disclosure fees** (and related services) for preparing and delivering resale packets that used to only be available for professionally-managed associations.
- ✓ *For condominium and property owners' associations*, be sure the association starts **reviewing requested records for possible redaction** of confidential information (rather than withholding the entire document) and be sure that there is a **board-adopted cost schedule** that allows for recovery of costs associated with providing copies of records, including costs incurred by the association to review and redact confidential portions of the requested records.

We hope this information helps prepare you for dealing with this year's new or amended laws directly affecting Virginia community associations. Of course, if you have any questions about this year's legislation and how they might impact your association, please do not hesitate to contact us.



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