



2019 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. For instance, one bill introduced this year (but which failed to make it out of committee) would have made it a misdemeanor criminal offense to willfully violate any provision of the Condominium Act, subjecting the "criminal" board member to a fine of up to \$50,000 and up to six months in jail. Another bill that was introduced but failed would have required all condominium associations to establish a "reasonable, effective, and free method" for state political candidates to communicate with unit owners concerning their candidacy.

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.

This article will address several enacted pieces of legislation that directly impact community associations. These include, for instance, amended or new statutory provisions dealing with in-home childcare businesses, reserves and budgets, stormwater management, proxy appointments, emailing meeting notices, and yes, as always, tweaks to resale disclosure requirements. The legislation described below has 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 a particular piece of legislation may have on your community association, we encourage you to contact your elected state delegate or senator to make your point-of-view known.

Also, be aware (and forewarned) that the section of the Virginia Code (Title 55) that contains the Condominium Act ("Condo Act") and the Property Owners' Association Act ("POA Act") is being recodified

(i.e., re-written) as a new Title 55.1, resulting in the complete renumbering, rearranging and, in some cases, rewording of the statutory provisions contained in these two Acts. This recodification will not take effect until October 1, 2019.

How do these changes affect your association? See our Legislative update “to do” checklist below.

The 2019 CWMEB seminar series is in full swing. Visit our website and register to attend one of our remaining dates to hear more regarding these legislative changes.

Budgets and Reserves – *House Bill 2030 [David L. Bulova (D) - House District 37] and Senate Bill 1538 [Scott A. Surovell (D) - Senate District 36]*

This legislation amends both the Condo Act and the POA Act (§§55-79.83:1 and 55-514.1) to address the availability of adopted budgets and to modify the requirements for including reserve-related information as part of a budget. First, this legislation states that, unless otherwise provided in the condominium instruments or a property owner’s association’s declaration, the board of directors is required to make available to homeowners, prior to the commencement of the fiscal year, either (i) the association’s annual budget or (ii) a summary of the budget. Hasn’t an association’s adopted budget always been available to homeowners, given that it is part of the association’s records available for inspection and copying?

Also, this legislation states that when the association’s reserve study indicates a need to budget for reserves, then (in addition to other reserve-related information already required to be included as part of the adopted budget), the budget must include a statement of the amount of reserves recommended in the reserve study and the amount of current cash for replacement reserves. Finally, it also requires the Va. Common Interest Community Board (“CICB”) to develop guidelines for the development of reserve studies for capital components, including a list of capital components that should typically be addressed in a reserve study.

Stormwater Facility Responsibility: Declarant Disclosure and CICB Cover Sheet for Resale Certificates and Disclosure Packets – *Senate Bill 1756 [Scott A. Surovell (D) - Senate District 36]; House Bill 2019 [Kathleen Murphy (D) - House District 34]*

This legislation will hopefully increase awareness of the responsibility for stormwater management facilities. It amends both the Condo Act and the POA Act (§§ 55-79.74 and 55-509.2) and amends the CICB-related statutory provision relating to the resale cover sheet (§ 54.1-2350). First, the legislation provides that, as part of the transition process to homeowner control, declarants are required to provide the association with an inventory and description of any stormwater facilities located on the common elements or common area or those facilities that otherwise serve the association and for which the association has (or subsequently may have) maintenance, repair or replacement responsibility. As part of this disclosure, the declarant is also required to provide information on applicable maintenance requirements for those facilities. This newly enacted stormwater management disclosure is in addition to the other information that declarants are already supposed to be providing to associations as part of the transition process.

The CICB is also required (yet again) to amend its standard form resale cover sheet (which associations must use with their resale certificates or disclosure packets) to now disclose to potential purchasers that association assessments might include funding for the construction or maintenance of stormwater management facilities.

Resale Certificates and Disclosure Packets: Right of Purchaser to Cancel Contract – *House Bill 2385 [David L. Bulova (D) - House District 37] and Senate Bill 1580 [David R. Suetterlein (R) - Senate District 19]*

This legislation also amends both the Condo Act and the POA Act (§§ 55-79.97 and 55-509.4) to clarify the right of purchasers to cancel their contracts for the purchase of units or lots. Although purchasers already had the right to cancel within three days after receiving a resale certificate (issued by a condominium association) or a disclosure packet (issued by a property owners' association), both statutes now explicitly state that the three-day right to cancel a purchase contract is also triggered by the purchaser receiving a resale certificate or disclosure packet that does not include all the disclosure statements or information required by statute.

Unit Owner Proxy Appointments – *House Bill 2647 [David A. Reid (D) - House District 32]*

This legislation amends only the Condo Act (§ 55-79.77) to clarify the requirement for proxy forms when they are signed by someone other than the actual unit owner. It also addresses proxy revocation when a unit's co-owners disagree on the proxy. Specifically, rather than referring to the signing party having the authority to execute deeds on behalf of the unit owner, the revised language now simply states that the proxy form (*i.e.*, the proxy appointment instrument) must be signed "by or on behalf of" the unit owner. In addition, if a unit is owned by more than one person, any one of that unit's co-owners may object to the proxy at or prior to the meeting, in which case the proxy is be deemed revoked.

Property Owners' Associations: Emailing Notice of Association Meetings – *House Bill 2694 [Mark L. Cole (R) - House District 88]*

This legislation amends the POA Act (§ 55-510) to expressly address using email for association meeting notices. Rather than just referring to sending association meeting notices by mail or hand-delivery, this statutory provision now states that these notices may instead be emailed to homeowners . . . *but only if* the homeowner "has elected to receive such notice by electronic mail and, in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail."

Property Owners' Associations: Home Childcare Businesses – *House Bill 1853 [David L. Bulova (D) - House District 37] and Senate Bill 1537 [Scott A. Surovell (D) - Senate District 36]*

This legislation amends the POA Act (§ 55-513.2) to further limit the instances in which property owners' associations will be able to completely prohibit in-home childcare businesses. In addition to existing limitations on the authority of associations to prohibit home-based businesses within their development, the statute now provides that *if the local government's zoning ordinance "classifies home-based child care*

services as an accessory or ancillary residential use,” then a home-based child care service is deemed to be a “residential use” unless expressly: (1) prohibited or restricted by the declaration, or (2) restricted by the association’s bylaws or rules as provided in subsection A of § 55-513.2. Subsection A still allows “reasonable restrictions as to the time, place, and manner of the operation of a home-based business and (ii) reasonable restrictions as to the size, place, duration, and manner of the placement or display of any signs on the owner’s lot related to such home-based business.”

Property Owners’ Associations: Declarant’s Duty to Register Association with CICB – Senate Bill 328
[Siobhan S. Dunnavant (R) - Senate District 12]

This legislation amends the POA Act (§ 55-509.1) to help ensure that declarant-controlled property owners’ associations are timely registered with the CICB and file their annual reports. It was adopted in 2018, but with a delayed effective date of July 1, 2019. Under this legislation, if an association is still under declarant control, the declarant is responsible for registering the association with the CICB within 30 days after the declaration is recorded in land records and is also responsible for ensuring that the association files the CICB-required annual report.

CICB Enforcement Authority – House Bill 1962 [David L. Bulova (D) - House District 37]

This legislation amends a CICB-related statutory provision (§ 54.1-2352) and the Condo Act (§ 55-79.100). Specifically, in situations where the CICB makes a written determination “that the public interest will be irreparably harmed by delay in issuing an order” against a board of directors, declarant or other person violating state laws and regulations governing community associations, the CICB’s enforcement authority is clarified to state that its authority is not limited to issuing temporary cease and desist orders, but rather the CICB also can take “affirmative action” deemed appropriate by the CICB.

CICB’s Annual Assessment Against Associations – House Bill 2081 [Vivian E. Watts (D) - House District 39]

This legislation amends CICB-related statutory provisions (§ 54.1-2349; 55-529), the Condo Act (§ 55-79.93:1) and the POA Act (§ 55-509.6; 55-509.7; 55-516.1) to eliminate the annual assessments levied against associations by the CICB (those that were based on a percentage of gross receipts). The CICB can continue to collect a fee when associations file their annual report with the CICB, but that fee cannot exceed \$25 unless the CICB decides to set the fee amount based on the number of units or lots in the association.

Local Government Stormwater Management Fund: Grants to Associations – House Bill 1614 [Mark L. Cole (R) - House District 88] and Senate Bill 1248 [Bryce E. Reeves (R) - Senate District 17]

This legislation establishes new Va. Code § 15.2-2114.01, which authorizes a local government to create a Stormwater Management Fund for issuing grants to private property owners or common interest communities for stormwater management and erosion prevention. These grants can only be used for the construction, improvement, or repair of a stormwater management facility or for erosion and sediment control.

2019 Virginia Legislative Update “To-Do” List

Consider taking the following actions related to the new or amended laws that take effect on July 1, 2019:

- ✓ *For condominiums and property owners’ associations*, obtain the applicable updated version of the **CICB’s revised resale disclosure notice**, and then update your resale disclosure materials to include the applicable notice form starting July 1, 2019. These updated forms are (or will be) available on the CICB website (http://www.dpor.virginia.gov/CIC-Board/Disclosure_Notices/).
- ✓ *For condominiums and property owners’ associations*, be sure your **adopted budgets** (or a summary) are **available** to owners prior to the beginning of each fiscal year, unless your association’s condominium instruments or declaration of covenants specifically provide otherwise.
- ✓ *For condominium and property owners’ associations*, be sure that your **adopted budgets** contain all new (and previously-required) information related to **reserve funds** (see (Condo Act § 55-79.83:1 and POA Act § 55-514.1).
- ✓ *For condominium and property owners’ associations* that are **transitioning from declarant control** to homeowner control after July 1st, be sure that the declarant is providing the association with the required information relating to **stormwater management** facilities and responsibilities.
- ✓ *For condominium and property owners’ associations*, be sure that your resale certificates (disclosure packets) contain all required disclosures and documentation, so that there is a reduced chance of buyers subsequently cancelling their purchase contracts due to your association’s **incomplete resale disclosure**.
- ✓ *For condominium associations*, review your **proxy forms** (or proxy form instructions) to ensure that they are consistent with your condominium instruments and applicable statutory requirements.
- ✓ *For property owners’ associations*, consider whether to implement an “opt-in” procedure for sending **association meeting notices** to owners by email rather than sending hard-copy notices by U.S. mail.
- ✓ *For property owners’ associations*, consider whether your approach to **in-home childcare** businesses needs to change based on the language in your declaration and how your locality’s zoning ordinance treats these businesses.
- ✓ *For property owners’ associations still under declarant control*, confirm the association is **CICB-registered and** files the required **annual report**.
- ✓ *For condominium and property owners’ associations having difficulty funding repairs to stormwater facilities or erosion damage*, consider speaking to your local officials about creating a government fund for issuing grants to associations to help with funding.

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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