



THE SPECIAL ASSESSMENT

June 2020 Edition

2020 Virginia Legislative Update

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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, 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. 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 of the enacted pieces of legislation that directly impact community associations. These include, for instance, temporary authorization of virtual board meetings during declared states of emergency, new provisions governing electric vehicle charging stations, more owner-favorable solar panel legislation, added fair housing protections, 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 unless otherwise noted. 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.

Holding 100% “Virtual” Board Meetings During Declared Emergencies

In response to the COVID-19 health emergency, the General Assembly passed two budget bills in April 2020, which included Governor-recommended provisions *temporarily* authorizing community association governing boards to meet 100% “virtually” (without the requirement of any director being physically present) *during the period of a state emergency declared by the Governor*, as long as certain requirements are met. This authorization is currently in effect through June 30, 2022.



100% virtual board meetings are authorized only when:

1. The nature of the state of emergency makes it impracticable or unsafe to assemble in a single location; *and*
2. The purpose of the board meeting is (a) to discuss or transact business that is statutorily required *or* (b) necessary to continue the operation of the association and the discharge of its lawful purposes, duties and responsibilities.

If the above conditions are met, then the board is not required to have two directors physically present at a meeting place as usually required by the Condominium Act (§ 55.1-1949) and the Property Owners’ Association Act (§ 55.1-1816).

Special Procedures for 100% Virtual Board Meetings (when authorized per the above) include the following:

1. The board must *give notice* of the meeting to owners, contemporaneously with notice provided to directors, using the best available method given the nature of the emergency; and
2. The board must make arrangements for *owners to have access to the meeting* through electronic means including, to the extent practicable, videoconferencing technology; and
3. If the electronic means of communication allows, the board must provide owners with an *opportunity to comment*; and
4. The board must *distribute meeting minutes* to owners in the *same method* used to provide the meeting notice, *and the minutes must state* the nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means that was used.

POA Resale Disclosure Packets: Restrictions on Political Signs – *House Bill 720 [Reid (D) - House District 32; Cole (R) - House District 88; Subramanyam (D) - House District 87]*

Once again, the General Assembly has added to the list of mandatory resale disclosures by POAs. Section 55.1-1809 of the Property Owners’ Association Act was amended to require association-issued resale disclosure packets to include a statement setting forth any restrictions regarding the size, place, duration or manner of placement or display of political signs by a lot owner on the owner’s lot.

As originally introduced (before being amended in committee), this legislation would have significantly limited the ability of associations to restrict or prohibit lot owners from displaying signs on their lots advocating (whether civilly or not) for or against a political candidate, governmental referendum or political organization.

Solar Panel Installations: Unreasonable Restrictions – *Senate Bill 504 [Petersen (D) - Senate District 34] and House Bill 414 [Delaney (D) - House District 67; Simonds (D) - House District 94]*

Virginia Code § 67-701 [Covenants regarding solar power] was amended to place additional limits on the authority of community associations to regulate the installation of solar panels and other solar energy collection devices on an owner’s property. Although the recorded declaration can still prohibit solar energy collection devices, this legislative amendment states that an *association-adopted restriction is deemed to be unreasonable if*, when applied to a particular proposal:



1. The restriction either: (i) increases the cost of installation of the solar energy collection device by 5% over the projected cost of the initially proposed installation, or (ii) reduces the energy production by that collection device by 10% below the projected energy production of the initially proposed installation; *and*
2. The owner provides documentation prepared by an independent solar panel design specialist (certified by the North American Board of Certified Energy Practitioners and licensed in Virginia) that is satisfactory to the association to show that the restriction is not reasonable according to the above criteria.

Owners Installing Electric Charging Stations – Senate Bill 630 [Surovell (D) - Senate District 36]

Both the Condominium Act (new § 55.1-1962.1) and the Property Owners’ Association Act (new § 55.1-1823.1) were amended to facilitate the installation of electric vehicle (EV) charging stations by homeowners. More specifically, *unless*



EV charging stations are specifically prohibited by the condominium instruments (declaration/bylaws) or the recorded declaration of a property owners’ association (POA), the association cannot completely prohibit owners from installing an EV charging station for their own personal use on either:

- the owner’s property (POAs); or
- within the boundaries of the owners’ unit or *limited common element* parking space (Condos).

However, there are a number of important conditions and requirements that may impact an owner’s desire or ability to move forward within installation.

Conditions/Requirements Applicable to both POAs and Condominiums:

1. *Indemnification* – the owner must indemnify and hold the association harmless from all liability arising out of the installation, maintenance, operation, or use of the EV charging station; and
2. *Insurance* – the association can require the owner to (i) have insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the EV charging station, and (ii) add the association as an additional or named insured on that insurance policy.

Conditions/Requirements Applicable to POAs Only:

1. *Lots* - the association can have restrictions regarding the number, size, place and manner of placement and installation on the exterior of the owner’s property; and
2. *Common Area* – the association can prohibit or restrict installation on the common area.

Conditions/Requirements Applicable to Condos Only:

1. *Feasibility* – the association can prohibit installing if it is not technically feasible or reasonably practicable due to safety risks, structural issues, or engineering conditions.
2. *Conditions on Approval* – when an owner requests to install an EV charging station, the association can make approval conditioned upon the owner complying with the following:
 - a. Providing detailed plans and drawings prepared by a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an EV charging station.
 - b. Complying with applicable building codes or recognized safety standards.

- c. Complying with reasonable architectural standards regarding the dimensions, placement, or external appearance of the EV charging station.
- d. Paying the costs of installation, maintenance, operation, and use of the EV charging station.
- e. Indemnifying and holding the association harmless from any claim made by a contractor or supplier who records a lien for unpaid sums (such as a mechanic's lien).
- f. Paying the cost of removal of the EV charging station and restoration of the area if the unit owner decides there is no longer a need for the EV charging station.
- g. Separately metering, at the unit owner's sole expense, the utilities associated with the EV charging station and pay the cost of electricity and other associated utilities.
- h. Engaging the services of a licensed electrician or engineer familiar with the installation and core requirements of an EV charging station to install the EV charging station.
- i. Providing a certificate of insurance applicable to any claim related to the installation, maintenance, operation, or use of the EV charging station within 14 days after receiving the association's approval to install such charging station.
- j. Reimbursing the association for any increase in common expenses specifically attributable to the EV charging station installation, including the actual cost of any increased insurance premium amount, within 14 days' notice from the association.

Termination of Condominiums: Disclosure of Approved Termination / Valuation of Units – House Bill 1548 [Simon (D) - House District 53]

The Condominium Act (§55.1-1937) was amended to impose new requirements and clarify existing procedures when unit owners are terminating the existence of a condominium (for instance, when selling the property to a developer who will redevelop the area).

For instance, after unit owners approve the termination of the condominium and until the termination agreement is recorded in land records, a copy of the agreement must be included in resale certificates, and if someone acquires a unit before the termination agreement is recorded in land records, that new owner is deemed to have agreed to the termination. In addition, if a unit owner's share of the sale proceeds is calculated based on something other than fair market value, there is a new procedure for giving owners notice and for resolving disputed calculations if at least 10% of unit owners dispute the calculation within 30 days.

Contesting Amendments Adopted Without Required Mortgage Lender Consent – House Bill 1548 [Simon (D) - House District 53]

The Condominium Act was amended (§ 55.1-1941) to help protect an owner-approved amendment to the condominium declaration or bylaws from claims that the amendment was improperly adopted without required mortgagee (i.e., mortgage lender) consent. Specifically, if a particular amendment should have been approved by a percentage of mortgage lenders, but was not, that amendment can only be legally challenged by an institutional lender that had been entitled to notice and a chance to approve the amendment. In addition, once the amendment is recorded in land records, there is a one-year statute of limitations for the lender to file suit to void the amendment.

Locality's Tax Sale of Undeveloped Common Area (when HOA no longer exists) – House Bill 1655 [Orrock, Sr. (R) - House District 54]

Virginia Code § 15.2-1800.3 (in the part of the Virginia Code dealing with the power of localities) was added to address a local government's authority to conduct a tax sale for delinquent taxes owed on undeveloped common area. If the tax delinquent real estate parcel is (i) undeveloped common area in a subdivision, *and* (ii) located in a subdivision with a now dissolved homeowners' association, then before holding a public auction, the locality may choose to offer the parcel (in whole or in part) to adjacent property owners.

Expanded Protections Against Discrimination – House Bill 6 [Bourne (D) - House District 71; Bagby (D) - House District 74; Lopez (D) - House District 49; Samirah (D) - House District 86]; and House Bill 1049 [Levine (D) - House District 45; Adams (D) - House District 68; Roem (D) - House District 13; Sickles (D) - House District 43]; and Senate Bill 868 [Ebbin (D) - Senate District 30; Boysko (D) - House District 33; McClellan (D) - House District 9; and several other Senators and Delegates]

In addition to expanding the scope of persons protected from discrimination in the workplace and in public accommodations (such as restaurants), the Virginia Fair Housing Law (at §§ 36-96.1 through 36-96.3) was amended to prohibit housing-related discrimination based on a person’s sexual orientation, gender identity, status as a veteran or source of income. These “protected classes” are in addition to the previously existing categories of race, color, religion, national origin, sex, elderliness, familial status. Note that “source of income” is defined to mean any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

2020 Legislative Update “To-Do” List

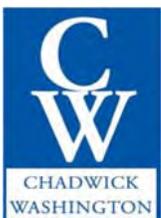


Consider taking the following actions related to this year’s Virginia legislation:

- ✓ *For condominium and property owners’ associations*, during the current Governor-declared state of emergency (or future ones through June 2022), ensure that all mandatory protocols are being followed for **100% virtual board meetings**.
- ✓ *For property owners’ associations*, update your **resale disclosure** materials to include the applicable disclosure regarding restrictions on **political signs**.
- ✓ *For condominiums and property owners’ associations*, consider whether to amend existing rules and regulations pertaining to solar panels and other **solar energy collection devices**, or whether to amend the condominium instruments or POA declaration to specifically prohibit those devices.
- ✓ *For condominium and property owners’ associations*, consider whether to amend existing rules and regulations pertaining to **electric vehicle charging stations** or whether to amend the condominium instruments or POA declaration to specifically prohibit them.
- ✓ *For condominium and property owners’ associations*, be sure that all directors, officers, managers, committee members and employees are **aware of** anti-discrimination laws and related policies, including the **expanded list of protected** classes under the **Virginia Fair Housing Law**.

We hope this information helps prepare you for dealing with this year’s legislation most 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.

Legal Disclaimer: The information in this newsletter is not intended to be legal advice. Legal advice must be tailored to your specific facts and circumstances and your association’s governing documents. This newsletter is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the individualized advice of your legal counsel.



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