



# THE SPECIAL ASSESSMENT

## 2016 VIRGINIA LEGISLATIVE UPDATE

By Allen Warren

*New and amended statutes affecting community associations are going into effect on July 1, 2016.*

*Please contact us if you have questions concerning any of these legislative changes and how they may affect your Association.*



It is time once again to get acquainted with this year's batch of legislation enacted by the Virginia General Assembly. During this year's General Assembly session, approximately 1,800 bills passed out of just over 3,200 bills that were introduced or carried over from last year. This article will touch upon some of the more important or interesting pieces of legislation that directly or indirectly impact community associations. These include, for instance, new or amended laws dealing with rental-related rules and restrictions, resale disclosures, and condemnation of common area.

All of the new legislation referenced below has been signed by the Governor and will take effect on July 1<sup>st</sup> 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 parenthetically next to the bill numbers. If you appreciate, or do not appreciate, the impact of particular new legislation on community associations, we encourage you to contact your elected state delegate or senator to make your point-of-view known.

**Rental of Units/Lots** – House Bill 684 [Delegate Peace (R) - House District 97, King William County] – This legislation amends the two new code sections that were just added last year to the Condominium Act and the Property Owners' Association Act ("POA Act") (§§ 55-79.87:1 and 55-509.3:1, respectively). These code sections

relate to association-imposed restrictions and charges associated with the rental of units or lots, and continue to provide that condominium and property owners' associations cannot condition or prohibit an owner's rental to a tenant or impose an assessment or charge *except as expressly authorized in the Condominium Act (or POA Act), in the condominium instruments (or declaration), or as otherwise provided by law.*

This year, a few of the specific "do's and don'ts" were revised. For instance, *except as expressly authorized in the Condominium Act (or POA Act) or in the condominium instruments (or declaration),* associations cannot:

- (1) charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during the term of any lease (there is no longer a reference to these fees being limited to those charged as a condition of approving the rental);
- (2) require an owner to use a lease or lease addendum prepared by the association (the reference to "lease addendum" was added this year); or
- (3) require a deposit from the owner or tenant ("security deposit" was revised to "any deposit").
- (4) have the authority to evict an owner's tenant or require the owner to give that authority to the association.

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Although these code sections no longer include explicit statutory recognition of the authority of associations to (i) require owners to provide a copy of the tenant's lease or to (ii) require use of an association form to provide tenant information, associations may still have the authority to do so, depending on (i) the provisions of the recorded governing documents or (ii) the scope of the board's rulemaking authority. In addition, the statute was revised to add explicit authority to obtain contact information for the owner's agent (if any), in addition to contact information and vehicle information for all authorized occupants and tenants.

**Resale Certificates/Disclosure Packets** – House Bill 684 [Delegate Peace (R) - House District 97, King William County] – The resale disclosure requirements and procedures were again amended this year in both the Condominium Act and the POA Act. Code sections that were amended include §§ 55-79.97 and 55-79.97:1 of the Condominium Act and §§ 55-509.4, 55-509.5 and 55-509.6 of the POA Act.

Gone is the nonsensical 90-day moratorium (added last year) on charging an extra fee for requested resale disclosure updates. In addition, for condominiums and professionally-managed property owners' associations, the deadline within which the certificate/packet fee must be paid has been extended from 45 to 60 days (if closing has not occurred by then).

Does your association provide resale disclosure packets electronically? Similar to what is already provided for in the Condominium Act, the POA Act was amended to state that a seller (or the seller's authorized agent) may designate that an electronic copy of the resale packet be provided to up to five individuals named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and/or not more than one other person designated by the requestor.

**Condemnation of Common Area** – Senate Bill 237 [Senator Petersen (D) - Senate District 34, Fairfax County] – If some of your association's common area property is taken through eminent



domain powers (e.g., for the widening of a public street), the POA Act was amended to clarify how the common area is to be valued (or appraised) to determine the appropriate "just compensation" that must be paid to the association. Specifically, the affected common area must be valued on the basis of the common area's "highest and best use" as though it were not restricted solely to use as common area. This should result in higher valuations and, thus, increased compensation for associations than has been typically seen when common area land is taken for public purposes.

**Nonstock Corporation Act - Board Action without a Meeting** – House Bill 234 [Delegate Sullivan, Jr. (D) - House District 48, Arlington County]. Section 13.1-865 of the Nonstock Corporation Act, pertaining to board "action without a meeting" by written consent, has been amended to allow a nonstock corporation's articles of incorporation to explicitly authorize an "action without a meeting" through the written consent of a quorum or majority of the directors, rather than only by unanimous consent. However, even if the articles of incorporation authorize taking action without a meeting on less than unanimous written consent, the board must give at least 10 business days' notice of the proposed action and cannot take the action if any director objects within that 10-day timeframe. Keep in mind that if your association is incorporated under the Va. Nonstock Corporation Act, the board can only make use of this new procedure if it is expressly authorized by the association's articles of incorporation.

**Automatic Notification of Sex Offender Registration** – House Bill 1101 [Delegate Villanueva (R) - House District 21, Virginia Beach] – Just like schools, day care centers, nursing homes, and few other types of entities, "common interest communities" (as defined in Va. Code Sec. 55-528) can submit a request to the state police to receive automatic notification when a sex offender registers with the state listing an address located in the same or a contiguous zip code area as the association.

Please keep in mind that the Virginia State Police website continues to provide a searchable online "Sex Offender Registry," which owners and residents can search on their own if they wish to do so. We also caution that, as stated on the State Police website, "since information changes quickly, and there may be gaps in data received, the Virginia State Police makes no representation, either express or implied, that the information on this site is complete or accurate." In addition, "extreme care must be taken in the use of information because mistaken identification may occur when relying solely upon name, age, and address to identify individuals," and "unlawful use of the information for purposes of intimidating or harassing another is prohibited and willful violation shall be punishable as a Class 1 misdemeanor."

**Localities Barred from Seeking Association Consent for Permits/Licenses** – HB 1146 & SB 389 [Delegate Hope (D) - House District 47, Arlington County; Senator Surovell (D) - Senate District 36], Prince William County – under this new legislation, a local government is prohibited from conditioning the issuance of a license, permit or certificate (including, e.g., building permits or in-home businesses) on whether the applicant's proposed activity has the consent of the board of directors of the applicant's condominium association, property owners' association or co-op. Note, though, that this does not limit or otherwise impinge upon an association's authority to enforce the association's own governing documents.

**Service of Process on Registered Agents** – SB 241 [Senator Petersen (D) - Senate District 34, Fairfax County] – If corporation's "registered office" is a single-family residential dwelling, then rather than having to serve the registered agent personally with a lawsuit or other legal summons, the sheriff or private process server can go to the registered office and either (1) deliver a copy of the court papers to any person found there who is a member of the family 16 years of age or older, or (2) if there is no such family member present, post (tape) a copy of the court papers at the front door of the dwelling. Essentially, this makes it easier to serve corporations (including incorporated community associations) that have a registered agent who lists his/her single-family home address with the Virginia State Corporation Commission rather than listing a business address.

## 2016 Legislative Update "To-Do" List



Consider taking the following actions in preparation for the new or amended laws that take effect on July 1, 2016:

✓ Review your current **rental-related charges and rules** - are they consistent with the authority and limitations found in your association's recorded documents and state statute (§ 55-79.87:1 of the Condominium Act and § 55-509.3:1 of the POA Act, as applicable)?

✓ For condominiums and professionally-managed property owners' associations, ensure that your resale disclosure procedures account for the **change in the deadline when the resale certificate/ packet fee must be paid** – 60 days instead of 45 days (if closing has not occurred by then). See § 55-79.97:1 of the Condominium Act and § 55-509.6 of the POA Act, as applicable.

✓ For associations that offer electronic delivery of resale disclosure certificates/packets, be aware that for the one resale fee, the **requesting party can designate up to five recipients**, and **provide the certificate/packet to the designated recipients**. See § 55-79.97 of the Condominium Act and § 55-509.5 of the POA Act, as applicable.

✓ For incorporated associations, review your articles of incorporation to determine whether taking an **"action without a meeting"** on less than unanimous written consent is authorized (or consider whether to pursue an amendment to the articles of incorporation to specifically authorize it).

✓ For incorporated associations that have an officer or director serving as the registered agent (listing his/her single-family dwelling as the registered office), **consider formally changing the association's registered agent** (as listed with the Va. SCC) **to be the association's attorney** or another business entity authorized to serve as the registered agent under Va. law.

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



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