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Virginia and Maryland Legislative Changes

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Introduction to Virginia Legislative Changes

The General Assembly passed several significant bills this session which affect property owners' associations and condominium associations. The bills will take effect on July 1, 2004. The following is a brief summary of these various legislative changes.

LEGISLATIVE CHANGES WHICH AFFECT PROPERTY OWNERS' ASSOCIATIONS ONLY

Open Committee Meetings

The General Assembly passed Senate Bill 348, which provides that meetings of committees and subcommittees of the Board of Directors are open to members of the association. While minutes of Board of Directors meetings must be recorded, committees and subcommittees are not required to maintain minutes unless they convene into executive session. If the committee enters executive session, the meeting minutes should only reflect the purpose for entering the executive session, the time that executive session commenced and the time that the executive session ended. Notice of the time, date and place of each committee and subcommittee meetings

must be published where it is reasonably calculated to be available to a majority of the lot owners. Agenda packets and materials must be made available for review by members of the association at the time they are provided to committee and/or subcommittee members, as applicable.

Draft Minutes of Board Meetings

The General Assembly also passed House Bill 894, which provides that draft minutes of Board meetings shall be available to members for review the earlier of: (1) within 60 days after the adjournment of the Board meeting; or (2) when the minutes are distributed to the directors in the agenda packet for the next Board meeting.

LEGISLATION THAT AFFECTS BOTH CONDOMINIUM AND PROPERTY OWNERS' ASSOCIATIONS

Non-Judicial Foreclosure

The General Assembly passed various bills that amend Section 55-79.84 of the Condominium Act and 55-516 of the Property Owners' Act to modify the

procedures for pursuing a non-judicial foreclosure. The changes apply to both acts and operate as follows: (1) it provides the association with 36 months¹ from the date of perfection of the lien to foreclose or file suit; (2) clarifies that an association has the power to sell and convey the lot or unit, and that the association is the statutory agent for the delinquent owner for the purpose of conveying title; (3) amends the foreclosure notification requirements to provide that the notice to the delinquent owner must set forth: (a) the amount of the debt secured by a perfected lien, (b) the action that must be taken to satisfy the debt secured by a lien, (c) the date, not less than sixty (60) days from the date notice is given to the owner, by which the debt secured by the lien must be satisfied, (d) that failure to satisfy the debt by such date may result in foreclosure of the lot or unit, and (e) the owner has a right to bring an action in circuit court to challenge the existence of the debt or to raise other defenses; (4) provides that a delinquent owner may stop a foreclosure sale prior to the date of the foreclosure sale if: (a) the owner satisfies the debt secured by a perfected lien, and (b) the owner pays all expenses and costs associated with the foreclosure to date, including all advertising fees and attorney's fees; (5) allows association to bid at the sale unless prohibited by the association's governing documents; (6) requires the association to appoint a Trustee, who must convey title to

¹ There is a conflict among the various bills which amend the non-judicial foreclosure requirements set forth in § 55-516 of the Property Owners' Association Act. Because the language of the various bills is inconsistent, we do not know whether the final text of the law will clarify an ambiguity as to whether an Association must foreclose on a perfected lien within 24 months, instead of 36 months. Nevertheless, we believe the final text of the law will allow Association's to foreclose on a perfected lien within 36 months of the date of recordation of the lien.

the lot or unit by special warranty deed and must file an accounting of the foreclosure sale with the commissioner of accounts for the circuit court.

LEGISLATIVE CHANGES THAT AFFECT ONLY CONDOMINIUM ASSOCIATIONS

Insurance Deductible

The General Assembly passed House Bill 555, which reversed last year's bill which added Section 55-79.81(C) to the Condominium Act to clarify the allocation of responsibility for paying the association's insurance deductible under its master casualty policy. Accordingly, it is no longer clear that the unit owner is responsible for paying the association's insurance deductible if the claimed damage originated in or through the owner's unit or any component of such unit, even is the damage was not caused by the owner's negligence.

LEGISLATIVE CHANGES THAT AFFECT NONSTOCK CORPORATIONS ONLY

Term of Director Appointed to Fill a Vacancy

The General Assembly passed House Bill 884 to clarify that in the absence of a provision in the Articles of Incorporation that states otherwise, the term of a director appointed by a vote of the Board to fill a vacancy on the Board expires at the next meeting of the Association at which directors are elected.

Please note that many of these statutory changes are subject to the express provisions of a community association's governing documents. For this reason, we recommend that you confer with your association counsel before your association implements

any procedural changes to conform to the legislative changes described in this memorandum.

Also, please contact any of the community association attorneys in this office if you should have any questions regarding any of these legislative changes affecting community associations in Virginia.

Introduction to Maryland Legislative Changes

The Maryland General Assembly passed a few significant bills this session which affect property owners' associations and condominium associations. The bills will take effect on October 1, 2004. The following is a brief summary of these various legislative changes.

LEGISLATIVE CHANGES THAT AFFECT BOTH CONDOMINIUMS AND PROPERTY OWNERS ASSOCIATIONS

Access to Books and Records

Section 11-116 of the Maryland Condominium Act was revised to permit the following records to be withheld from examination by unit owners: a) personnel records, b) an individual's medical records; c) business transactions in negotiation; d) written advice of legal counsel; and d) minutes of a closed meeting of the Board or Committee. These changes to Section 11-116 mirror the access to books and records provisions of Section 11B-112 the Maryland Homeowners Association Act; however, Section 11B-112 of the Maryland Homeowners Association Act was also revised by the general assembly to add a new subsection to permit an Association to withhold from owner inspection the minutes

of a closed meeting of the Board or Committee.

Electronic Transmission of Meeting Notices and Votes

Sections 11-101 and 11-139.1 of the Maryland Condominium Act and Sections 11B-101 and 11B-113.1 were revised to permit Condominium and Homeowners Associations to transmit meeting notices and receive votes from owners electronically notwithstanding any provisions in the Association's governing documents that would invalidate meeting notices or voting via electronic transmission. Section 11-139.1 of the Condominium Act and Section 11B-113.1 of the Homeowners Association Act both require Associations to obtain the owner's written authorization prior to delivering any meeting notices by electronic transmission.

American Flag Display

Section 14-128 of the Maryland Real Property Code was added to permit any owner of a dwelling to display "one portable, removable flag." The flag must be displayed in a "respectful" manner and the display of the flag is subject to the reasonable rules and regulations adopted by a condominium or homeowners association; however, the new legislation also dictates the manner in which the rules governing the display of the American flag must be adopted. Any reasonable rules and regulations governing the display of an American flag must: a) be adopted at an open meeting of the Board of Directors where owners are permitted to comment upon the proposed rules; and b) be adopted after notice of the open meeting is published in accordance with the Association's governing documents or, if the documents

are silent, by any other means reasonably calculated to inform the affected residents.

LEGISLATIVE CHANGES THAT AFFECT PROPERTY OWNERS ASSOCIATIONS ONLY

Procedures to Delete Covenants Concerning Race, Religion and National Origin

Section 11B-113.1² was added to the Maryland Homeowners Association Act, which permits an Association to remove recorded covenants concerning race, religion and national origin with the approval of either: a) 85% of the members of the Association; or b) such lesser numbers set forth in the Association's Declaration or other recorded instruments.

The purpose of the amendment is to permit Associations that have a 90% or more approval threshold to amend their documents to use a lower 85% approval threshold to delete any covenants among the Association's documents that relate to race, religion or national original. These sorts of restrictions were included among some of the recorded covenants of communities that were developed prior to the 1960's.

Annual Assessment Limits for Very Large Associations

Section 11B-113.1 was added to the Homeowners Association Act to resolve some issues with the assessments imposed by a very large homeowners association in Howard County, Maryland. The new

legislation only applies to associations that are comprised of 13,000 acres of land or 80,000 residents. The new legislation requires increases in annual assessments to be consistent with the tax valuation principles of Sections 8-103 and 8-104 of the State Tax-Property Code. Upon revaluation of the lots within a large association, owners are entitled to a rebate or credit equal to the portion of the assessment attributable to any growth in the value of the property in excess of 10%. Again, this new legislation is very limited in its application to Maryland homeowners associations.

Please note that many of these statutory changes are subject to the express provisions of a community association's governing documents. For this reason, we recommend that you confer with your association counsel before your association implements any procedural changes to conform to the legislative changes described in this memorandum.

Also, please contact any of the community association attorneys in this office if you should have any questions regarding any of these legislative changes affecting community associations in Maryland.

² A number of the bills that passed the general assembly and that were signed by the Governor added a new section, 11B-113.1, to the Maryland Homeowners Association Act. At the time of publication of this memorandum, the general assembly had not corrected the numbering of these new sections to the Act.

