

# 2007 Legislative Changes Affecting Community Associations

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## **VIRGINIA LEGISLATION**

The following bills will become law and take effect on July 1, 2007

### **1. LEGISLATION THAT IMPACTS CONDO ASSOCIATIONS ONLY**

**§55-79.95 Escrow of Deposits by Declarant.** Declarants of condominium projects which are larger than 50 units have the option of filing a surety bond or irrevocable letter of credit with the Real Estate Board in lieu of establishing a separate escrowing account for handling of deposits on the purchase of condominium units from the declarant. The surety bond or irrevocable letter of credit must be maintained until the earliest of: (1) the deed for the unit is granted to the purchaser; (2) the purchaser default's under the purchaser agreement, which entitled the declarant to keep the deposit; or (3) the deposit is returned to the purchaser. The amount of the bond/letter of credit is based upon the total amount of the deposits for the purchase of units within the condominium.

**§55-79.81 Insurance.** The General Assembly amended Section 55-79.71 of the Condominium Act to require any

condominium association collecting assessments for common expenses to obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy covering the officers, directors, and persons employed by the community association, as well as covering any managing agent and employees of the managing agent. This bond or insurance policy must provide a minimum of \$10,000 in coverage. The law authorizes the association's executive organ or managing agent to obtain such bond or insurance on behalf of the association.

### **2. LEGISLATION THAT IMPACTS BOTH VIRGINIA CONDO AND PROPERTY OWNERS' ASSOCIATIONS**

**§55-79.74:01 and §55-514.2 Deposit of funds.** The legislation requires that all association money deposited with a managing agent must be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. This provision will prohibit managing agents from commingling funds for any associations located within the Commonwealth of Virginia. Under this new statutory section, the managing agent is expressly defined as a fiduciary for the

purpose of handling all funds deposited with the managing agent. It also requires that the account must be recorded in a manner that permits the funds to be identified by an individual unit owners' association basis.

**§§ 55-79.97, 55-79.75:2, 55-79.90, 55-512 and 55-513.1 Display of Flags.**

The General Assembly amended several sections of the Condominium Act and Property Owners' Association Act to further limit the power of community associations to regulate the display of flags within the Association. Under these amendments, no condominium instrument or declaration shall restrict or prohibit the display by a unit or lot owner of the flag of the United States. The law provides, however, that an association may restrict the display of such flag in the common areas and may establish reasonable restrictions as to the size, place, and manner of placement or display. These amendments require the public offering statement, resale certificate, or association disclosure packet to contain a statement specifying any restrictions on size, place, and manner of placement or display of the flag.

**§55-79.97 and §55-512 Resale Disclosure Packets.** One of the more significant amendments to both the Condominium Act and Property Owners' Association Act increased the maximum fee that managed association may charge for resale disclosure packets or resale certificates, and changes the manner in which such fees are to be

collected from the seller. Under these amendments, community associations are now permitted to charge up to \$325 for the preparation and delivery of a resale certificate or disclosure packet if the fee is established in the contract between the association and its managing agent and the fee is disclosed on the website of either the association or the managing agent. The \$325.00 maximum fee will be adjusted annually to reflect changes in the Consumer Price Index. The fee is to be paid by the unit owners association to the managing agent promptly and it shall be assessed as an assessment against the unit or lot. In addition, the association may deliver the resale certificate/disclosure packet by electronic means unless the purchaser or seller requests a paper copy.

**§55-510 and §55-79.75 Notice of Meetings.**

Both the Property Owners' Association Act and the Condominium Act have been amended to permit association's to deliver notices of membership meetings or board meetings to the unit or lot, unless the owner has expressly provided the association with an alternate mailing address for the delivery of notices.

**§§13.1-801, et seq. Nonstock Corporation Act.** The General Assembly amended several provisions in the Virginia Nonstock Corporation Act, based upon recent amendments to the Model Business Corporation Act. Specific areas of

substantive change that may affect community associations:

- Provides that electronic notice of meetings of the Board of Directors qualifies as “written notice.”
- Includes a definition for “disinterested director” for the purpose of determining whether a director has a conflict of interest. A “disinterest director” is defined as “a director who does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment, or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § [13.1-878](#) or [13.1-880](#), is also not a party to the proceeding.
- Provided the Articles of Incorporation or Bylaws do not require an action to be taken in a Board meeting, a Board may take action outside of a Board meeting provided each director signs a consent describing the action to be taken and delivers the consent to the association. This amendment now permits the action taken outside of a meeting to pass upon a majority vote of the directors, provided each director delivers their written consent

to the taking of the action outside of a Board meeting.

- The Act has been amended to expressly permit the submission of proxies by electronic transmission.
- The Act has been amended to expressly provide for the appointment of inspectors of elections. Each inspector, before performing his duties, shall sign an oath to execute the duties of inspector with strict impartiality and according to the best of his ability. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii) determine the number of the members represented at a meeting and the validity of proxies and ballots, (iii) count all votes, (iv) determine, and retain for a reasonable period a record of the disposition of, any challenges made to any determination by the inspectors, and (v) certify their determination of the number of members represented at the meeting and their count of all votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with § 13.1-

847B of the Nonstock Corporation Act, ballots, and the regular books and records of the corporation. If the inspectors consider other reliable information for this limited purpose, they shall specify, at the time that they certify the election the precise information that they considered, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate and reliable.

#### **MARYLAND LEGISLATION**

The following bills have passed both the House and Senate and have been signed by the Governor:

**Statutory Lien Release Affidavit.** Permits an attorney, settlement agent or title insurer to prepare a release for a condominium or homeowners association lien after waiting 60 days after the lien has been satisfied and sending written notice to the association that the third party will file a lien release. (effective July 1, 2007)

**Other Items of Interest.** District Court Jurisdiction. Increases the jurisdictional limit of the District Court to \$30,000.00 from \$25,000.00.

#### **Disclosure of Conservation Easements.**

Conservation easements must be disclosed by the seller of real property and if not, the sale can be rescinded by purchaser. The statute sets forth the procedures for notifying the purchaser and the time limits for doing so and the time limits for the purchaser to rescind the sale.

**Clean Air Act 2007.** Prohibits people from smoking tobacco products in indoor areas open to the public and indoor places of employment except under specified circumstances, beginning February 1, 2008

**Electronic Recording Program.** Pilot program established for electronic recording of documents related to real property. This pilot program will permit the recordation of liens online, which is designed to relieve the Circuit Courts of the backlog of documents to be recorded

**Appointment of Receiver.** This law provides that if the number of Directors on a Board is less than a quorum, three or more owners may petition the circuit court to appoint a receiver to manage the property. The receiver shall have all the powers as the Board of Directors. The receiver's expenses, costs and attorney's fees shall be a common expense of the Association

#### **WASHINGTON, D.C. LEGISLATION**

**Homeland Security Risk Reduction and Preparedness Act of 2005.** The D.C. Council enacted the Homeland Security

Risk Reduction and Preparedness Act of 2005, which is codified as D.C. Law L16-262, and was effective March 18, 2007. This Bill establishes a homeland security program for the District of Columbia. While early drafts of the Bill included provisions that would have created onerous obligations upon condominiums and cooperatives within the District of Columbia to establish comprehensive security programs for the residents of the buildings, the final version of the Bill simply requires the District of Columbia to consult with owners of multi-family buildings within the District of Columbia when it adopts its homeland security program. Significantly, the law as enacted does not require associations to take any affirmative action to implement a homeland security program.

**Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Amendment Act of 2006.** The D.C. Council also established additional sanctions for nuisance abatement when it adopted the Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Amendment Act of 2006, which is codified at D.C. Law 16-236 became effective on Mar. 8, 2007. This Act establishes that civil fines, penalties, and fees may be imposed as additional sanctions for nuisance infractions pursuant to the Department of Consumer 17 and Regulatory Affairs Civil Infractions Act of 1985.

**Tenant Owner Voting and Conversion Election Clarification Temporary Amendment Act of 2006.** The D.C. Council adopted the Tenant Owner Voting and Conversion Election Clarification Temporary Amendment Act of 2006, which was codified as D.C. Law 16-253. This emergency act became effective March 18, 2007, as the current expiration date of October 19, 2007. The purpose of this Act was to amend on an emergency basis the Rental Housing Conversion Sale Act of 1980, to address the ambiguity in the Act. Under the emergency legislation, the law clarifies that tenants who become owners after exercising their rights under the 1980 version of TOPA are qualified to vote in a condominium or cooperative conversion election. Prior to the adoption of this temporary clarifying legislation, the Permanent Rental Housing Conversion and Sale Act contains ambiguities that make it unclear as to whether owners who require their tenants to become owners after exercising the rights under TOPA, are qualified to vote in conversion elections.

**Increase in Vault Rental Rates.** The D.C. Council adopted D.C. Law 16-296, which was Effective March 14, 2007, and served to repeal the Sub-Surface Space Rental Rate Resolution of the District of Columbia City Council from 1969. The effect of the repeal of Sub-Surface Space Rental Rate Resolution will be dramatic to any condominiums or cooperatives that possess subterranean vault space. In the District of

Columbia, it is not uncommon for residential buildings to be developed with a portion of their underground space to encroach onto public property. The most common uses for such subterranean space include parking or the hosting of utility vaults.

Under the revised underground vault rates, each owner of property abutting public space in which a vault is located shall pay an annual rent fixed from time to time by the Council of the District of Columbia for such vault. The bill established a rental floor for such annual rent shall not be less than \$10. The D.C. Council has set the rate for vault rentals at rates that approach an almost four hundred percent increase in rental rates from the rental rates that existed prior to the repeal of the Sub-Surface Space Rental Rate Resolution.

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