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2010 Virginia Legislative Update

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As is becoming the norm in our industry, the 2010 legislative session was active and several bills were introduced that affected the maturing Common Interest Community Board and Non-Stock Corporations. However, by the end of the session there were only a handful of legislative changes that have a potentially significant impact upon our community association clients. Unless otherwise noted below, the legislation addressed in this newsletter will take effect on July 1, 2010.

AMENDMENTS TO PROPERTY OWNERS' ASSOCIATION (POA) ACT ONLY

House Bill 702 – amends Section 55-509.7 of the POA to clarify when and how Associations that are not managed by a professional community association manager may collect charges for resale packages and updates to resale packages.

House Bill 1102 – if reenacted in the 2011 session, this bill would create a new Section 55-513.01 to the POA Act for the purposes of allowing a community, to the extent that a community's declaration allows, to adopt rules on parking that make parking spaces available to fewer than all lots. This legislation is intended to resolve issues with parking rules affecting garage and non-garage townhome lots. *This law will not take effect unless it is acted upon in the 2011 legislative session.*

LEGISLATIVE CHANGES THAT MAY AFFECT BOTH CONDOMINIUMS AND PROPERTY OWNERS' ASSOCIATIONS

House Bill 1058 – adds a new Section 55-79.71:1 to the Condominium Act and a new Section 55-515.3 to the POA Act to allow Associations to use electronic communications to disseminate official notices and to accept electronic member votes, but the use of these electronic communication methods is only allowed if your community's governing documents allow for the transmission of official notices or votes to be delivered electronically. If your community's documents do not reference that notices or votes may be transmitted electronically, then in most cases your community will not be able to take advantage of these new code provisions.

Senate Bill 1270 and House Bill 191 – amend Section 55-530 of the Virginia Code, which concerns the Common Interest Community Board Ombudsman complaint process, to include that the Association’s complaint procedures policy may be included among the materials that the Ombudsman’s office will review in connection with their review of a complaint. This amendment also provides that an Association must comply with their internal complaint policy.

As you may know, the process of adopting a complaint procedure detailed in Section 55-530 is not mandatory until the CICB Ombudsman has adopted regulations to address how the Ombudsman’s complaint review procedures will operate. These regulations were initially expected to be finalized in the Fall of 2010, but it appears that the rule making process for these particular regulations has been delayed and will not be final until late in 2010.

House Bill 468 – amends Section 54.1-2347, which details those persons who are exempt from manager licensing requirements, to add a new group that is exempt from having to be a licensed manager. Specifically, residents of a common interest community who provide bookkeeping, billing or record keeping services on behalf of the association for compensation are exempt from having to obtain a manager license as long as the community’s fidelity bond insures the community against any losses arising from the actions of these compensated residents. Additionally, this bill details that at least one of the three citizen members of the CIC Board must be a current or former member of the Board of a community association that is not professionally managed at the time of their appointment to the CICB.

Senate Bill 151 and House Bill 956 – amends Sections 55-79.75:2 of the Condominium Act and 55-513.1 of the POA Act to clarify that no community association shall prohibit any lot or unit owner from displaying the American flag upon property to which the owner has a right of separate ownership or exclusive possession. It’s important to note that any flag displayed in these exclusive possession or ownership areas must be displayed in accordance with the Federal Freedom to Display the American Flag Act of 2005. This Act incorporates the extensive federal laws detailing the proper display of the American flag. As an example, these federal laws require the American flag to be lit at night and to be erected only on certain types of poles, etc.

Senate Bill 131 – amends several sections of the Virginia Non-Stock Act (Sections 13.1-803, 13.1-804, 13.1-810, 13.1-823, 13.1-842, 13.1-845, 13.1-847, 13.1-847.1, 13.1-855, 13.1-866, 13.1-878, 13.1-883 and 13.1-939) and adds a new Section 13.1-844.2 to the Non-Stock Act. These amendments and the new Section are intended to clarify when electronic or digital data are deemed documents or records of the corporation and these amendments address when electronic signatures may be used to execute corporate documents. These amendments further support the amendments noted above that allow for the use of electronic communications for meeting notices to the extent that such notices are allowed by the corporation’s articles or bylaws.

**LEGISLATIVE CHANGES TO GENERAL LAWS THAT MAY
AFFECT BOTH CONDOMINIUMS AND PROPERTY OWNERS' ASSOCIATIONS**

There are also a number of statutory changes that did not modify provisions in the Non-Stock Corporation Act, Common Interest Community Act, Condominium Act, or Property Owners' Association Act, but will have an impact upon community associations in Virginia.

House Bill 1100 amended Section 10.1-603.12:3 of the Virginia Code to establish liability protections relating to stormwater management facilities. This provision provides a mechanism for an association to leave the obligation for the maintenance, repair and replacement of the stormwater management facility on the association's property to the Commonwealth of Virginia or to any city, town or county, which, in turn, creates an immunity from several liability for the common interest community for any claims arising out of the stormwater management facility. In order for an association to obtain immunity from liability established by this statutory amendment, the association must first enter into a contract with the governmental body taking over responsibility for the stormwater management facility under which the governmental body accepts responsibility for maintaining, repairing and replacing the stormwater management facility. The immunity created by the amendment will not apply to situations where the association engages in intentional, willful misconduct or gross negligence.

House Bill 192 amended Sections 54.1-2343 and 54.1-2344, which govern the Virginia Fair Housing Board. Specifically, the definition of a "person in business or activity of selling or renting dwellings" has been changed to mean any person who owns any combination of permanent residential dwelling units that are occupied by five or more families. The definition does not include a company that obtains title through a deed of trust or other mortgage. The statutory change also includes a provision that requires the Fair Housing Board to establish the regulations, educational materials under the Fair Housing laws, and requires any persons in the business of selling or renting dwellings to sign an affidavit certifying that they have read and understood the educational materials provided by the Fair Housing Board.

House Bill 297 added Section 15.2-980 to the Virginia Code to create the authority for localities to adopt a uniform schedule of civil penalties for violations of noise ordinances in Virginia. Specifically, under the changed law, any locality may, by ordinance, adopt civil penalties for violations of the noise ordinances which shall not exceed \$250.00 for the first offense and \$500.00 for any subsequent offense. This section, however, does not apply to noise generated in connection with a business being performed on industrial property.

House Bill 430 amended Sections 58.1-3258.1, 58.1-3259, 58.1-3295, 58.1-3331, 58.1-3374, and 58.1-3379, which all relate to real property tax assessments. These amendments contain some technical amendments; however, there are provisions that may have an impact upon community associations. Specifically, now upon the request of any taxpayer or their duly authorized representative (which for an association would include a property manager), the assessing officer is required to make available information regarding the method employed by

the governmental body in assessing the property's value. Also, there are new procedures governing assessment appeals.

House Bill 974 amended a number of Sections of the Virginia Code that govern Virginia Circuit Courts, including Sections 8.01-449, 17.1-258.3, 17.1-258.3:1, 17.1-276, 17.2-279, and 17.1-293. A number of these amendments are technical in nature and will not have a meaningful effect on associations. However, with respect to the amendment creating Section 17.1-258.3:2, Circuit Courts are now allowed to establish, assist and provide official certificates and certified records in digital form of any document maintained through the Clerk of the Court. This would include recorded deeds, other recorded documents, and judgments. Also, the amendments provide greater clarity on the electronic filing of certain documents in land records.

If you have any questions regarding any of these new changes to the Virginia code, please do not hesitate to contact any of the attorneys in our Community Association's department.