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Virginia Legislative Changes

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Introduction

The General Assembly passed a number of significant bills this session which affect property owners' associations and condominium associations. The bills will take effect on July 1, 2003. The following is a brief summary of these various legislative changes.

quorum requirements for a membership meeting from 25 percent to 10 percent of the votes of the association. Under this bill, a condominium association may amend its bylaws to reduce its quorum requirement for a membership meeting to as low as 10 percent.

LEGISLATIVE CHANGES WHICH AFFECT CONDOMINIUM ASSOCIATIONS ONLY

Open Committee Meetings and Dissemination of Information

The General Assembly passed House Bill 1722, which extends the requirement that meetings of the Board of Directors be open to the members of the unit owners' association to committees and subcommittees of the executive organ. The bill also clarifies section 55-79.75.1 of the Virginia Code to prohibit the executive organ from requiring its prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association, unless otherwise provided in the association's condominium instruments.

Quorum Requirements

The General Assembly also passed House Bill 1942, which lowered the minimum

Insurance Deductible

The General Assembly passed House Bill 2213, which clarifies the allocation of responsibility for paying the association's insurance deductible under its master casualty policy. The Bill states that, except to the extent otherwise provided in the association's condominium instruments, the association shall be responsible for paying the insurance deductible under its master casualty policy as a common expense of the association if the cause of damage to any portion of the condominium originated in or through the association's common elements. The unit owner shall be responsible for paying the association's insurance deductible if such damage originated in or through the owner's unit or any component of such unit, even if such damage was not caused by the owner's negligence.

Additional Assessment Power

The General Assembly passed House Bill 2216, which provides the executive organ

with the authority to levy additional assessments if it determines that the assessments levied by the association are insufficient to cover the association's common expenses, unless otherwise provided in the association's condominium instruments. The executive organ shall give written notice of any additional assessment to the unit owners stating the amount of the assessment, reasons for the additional assessment, and the due date for payment of such assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

All unit owners shall be obligated to pay the additional assessment unless a majority of the votes of the unit owners, vote to rescind or reduce the additional assessment in person or by proxy at a meeting of the association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice. No director or officer of the association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising from the rescission of the additional assessment.

Electronic Voting; Proxies; Notices

The General Assembly passed House Bill 2634, which provides condominium unit owners' association with the authority to send notices of association meetings by electronic transmission if consented to by the unit owner and permitted by the

condominium instruments or rules and regulations. The bill also empowers the association to allow its members to submit votes and proxies by electronic transmission if authorized by the unit owner or the unit owner's proxy. An electronic transmission is defined to include any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. This would include faxed and e-mail transmissions. The Bill also eliminates the requirement that signatures of unit owners on proxies be witnessed.

LEGISLATION THAT AFFECTS BOTH CONDOMINIUM AND PROPERTY OWNERS' ASSOCIATIONS

Video Taping of Board Meetings

The General Assembly passed House Bill 1694, which provides all unit owners and lot owners with the authority to video tape any meeting of the executive organ or Board of Directors

Meeting Notices

A provision in House Bill 2634, which is described in greater detail above, allows agents for officers of condominium and property owners' associations to send out meeting notices by electronic transmission.

Wage Garnishments

A provision in House Bill 1458 permits a garnishment to attach a debtors wages for 180 days, which is an increase of 90 additional days. Bank garnishments remain at a maximum of 90 days for the attachment.

LEGISLATIVE CHANGES THAT AFFECT ONLY PROPERTY OWNERS' ASSOCIATIONS

Amending the Declaration

The General Assembly passed House Bill 2034, which allows an association to amend its declaration by the vote of two-thirds of the lot owners, if: (I) the declaration was recorded prior to July 1, 1999; and (ii) the declaration is silent as to how the declaration may be amended.

Association's Subject to the Act

The General Assembly passed House Bill 2217, which eliminates the paragraph in Section 55-508 of the Virginia Code that excluded Associations with annual assessments under \$150 from coverage under the Property Owners' Association Act. Therefore, as of July 1, 2003, associations with mandatory annual assessment obligations of less than \$150 shall be covered under the Property Owners' Association Act.

Availability of Disclosure Packets

Another provision in House Bill 2217 provides that the association disclosure

packet shall be deemed not to be available if: (i) the association has not filed a current annual report with either the State Corporation Commission or with the Virginia Real Estate Board pursuant to § 55-516.1; (ii) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days of such, or (iii) written notice has been provided by the association that a packet is not available. The Act continues to provide that a contract purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet is not available.

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 with 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.