

May 2011

Community Associations Newsletter

2011 Virginia Legislative Update

By: Kathleen N. Machado and Todd A. Sinkins

The 2011 legislative session resulted in a number of significant changes that impact the Virginia Property Owners' Association Act, the Condominium Act, the Common Interest Community Manager statutes, and other provisions of the Virginia Code which have an impact on community associations. Unless otherwise noted below, the legislation addressed in this newsletter will take effect on July 1, 2011.

AMENDMENTS TO THE PROPERTY OWNERS' ASSOCIATION ACT ("POA")

Post Notice of Pesticide Applications at least 48 Hours Prior to Application

HB 2290, which amends Section 55-510.3 of the POA requires an association to post notice of all pesticide applications in or upon the common areas at least 48 hours prior to application. We recommend that our clients address this issue in their landscaping contracts to ensure that the Association has sufficient advance notice of any pesticide applications to ensure the Association can meet its statutory obligation.

Expanded Definition of Common Interest Community Manager

HB 1674 amends Section [55-509](#) of the POA to add a definition for the term "professionally managed" to mean "a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community."

Disclosure Packet Charges Only Permitted if Expressly Authorized by Statute

HB 1674 amends Section 55-509.3 of the POA by adding a prohibition against associations levying charges related to resale packets, unless expressly described by those sections of the POA that relate to resale packets (Sections 55-509.6-7 of the POA). This change

to the Act will serve to prohibit associations and management companies from adding additional fees for the provision of a resale packet unless such fee is expressly permitted under the Act.

AMENDMENTS TO THE CONDOMINIUM ACT

Right to Terminate Contract within 3 Days after Resale Certificate is Deemed to be Unavailable

HB 1674 amends Section [55-79.97](#) of the Condominium Act by including a requirement that a sales contract must contain language providing that the purchaser may cancel the contract within three days after not only receipt of the resale certificate, an existing requirement, but also after being notified that the certificate will not be available. This statutory change clarifies an ambiguity in the statute by ensuring that prospective purchasers have a right to terminate their sales contract if they are advised that the resale certificate will not be available for review. For purposes of determining whether the purchaser may exercise the right to cancel based on this clause, the resale certificate shall be deemed not to be available if: (a) a current annual report has not been filed by the association with either the State Corporation Commission (pursuant to Section 13.1-936 of the Virginia Code) or the Common Interest Community Board (pursuant to Section [55-79.93:1](#) of the Virginia Code), (b) the seller has made a written request to the association that the resale certificate be provided and no such resale certificate/packet has been received within 14 days in accordance with subsection C of Section 55-79.97, or (c) written notice has been provided by the association that a resale certificate is not available.

Resale Certificate Not Required for Foreclosure Auction Sale

HB 1674 also amends 55-79.97 Condominium Act by providing that a resale certificate is not required in the case of “disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.”

AMENDMENTS IMPACTING BOTH THE PROPERTY OWNERS’ ASSOCIATION ACT AND THE CONDOMINIUM ACT

Time Period for Assessing Resale Disclosure Fees Reduced to 45 Days

HB 1674, HB 2188 and SB 1323 amend Sections 55-79.97:1 and 55-509.6 of the Virginia Code to reduce from 90 to 45 days the time when the selling owner shall be responsible for the fees related to preparation of a resale disclosure packet/certificate when no settlement occurs on the unit or lot. HB 2188 provides that all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be assessed within

one year after delivery of the resale certificate/packet against the unit or lot owner. The bills also add language to both statutes indicating that the disclosure packet/resale certificate shall state that all fees and costs for the disclosure packet/resale certificate shall be the personal obligation of the lot/unit owner and shall be an assessment against the lot/unit and collectible as any other assessment in accordance with the provisions of the declaration/condominium instruments and Sections 55-516 or 55-79.83, if not paid within 45 days of the delivery of the packet/certificate. These changes should assist Associations in collecting these unpaid fees in a more timely fashion.

July 2012 Deadline for Establishing Fee Schedule for Accessing and Copying Association Records

HB 1741 amends Sections 55-79.74:1 and 55-510 of the Virginia Code and is not effective until July 1, **2012**. This Bill adds additional requirements regarding the provision of association records to requesting parties by providing that the charges for accessing and copying association books and records may be imposed only in accordance with a cost schedule adopted by the board of directors. The cost schedule shall: (i) specify the charges for materials and labor; (ii) apply equally to all members in good standing; and, (iii) be provided to such requesting member at the time the request is made. Accordingly, we recommend that in the coming year and ideally well in advance of July 12, 2012, each of our community association clients adopt a fee schedule in compliance with this change through the adoption and publication of a resolution that sets forth the charges for both material and labor associated with requests for copies of the Association's books and records.

AMENDMENTS TO THE COMMON INTEREST COMMUNITY STATUTES

Deadline Extended for Common Interest Community Manager Licensing

SB 983 amends Sections [54.1-2346](#), [54.1-2347](#), [54.1-2353](#), [55-79.74:1](#), [55-79.89](#), [55-79.90](#), [55-79.98](#), [55-79.99](#), [55-391.1](#), [55-396](#), and [55-399](#) of the Virginia Code. The most significant change implemented by SB 983 was the extension of the deadline for the issuance of provisional common interest community manager licenses to those parties who offered management services to common interest communities on or before December 31, 2008. The deadline was extended from June 30, 2011 to June 30, 2012. This change will afford management companies an additional year to meet the licensing requirements that originally became law in July 2007.

Deadline Extended for Supervisory Employee Certification by CICB

HB 1674 amends Sections [54.1-2346](#), [54.1-2347](#), [54.1-2349](#), [54.1-2353](#), [55-79.74:1](#), [55-79.97:1](#), [55-509](#), [55-509.3](#), [55-509.6](#), and [55-509.7](#) of the Virginia Code. This bill extends the deadline by which all employees of a common interest community manager that have principal responsibility for management services or who have supervisory responsibility for employees who participate directly in the provision of management services, within 2 years after employment with the manager, must hold a certificate from the Common Interest Community Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of the common interest community manager. This deadline was extended from July 1, 2011, to July 1, 2012.

Additional Requirements for Manager Certification

HB 1674 provides further clarification regarding the Common Interest Community Board's authority to establish certification criteria for the above-referenced employees of common interest community managers. The bill adds that the CIC Board may require, by regulation, that employees successfully complete Board-approved training programs developed by the Virginia Association of Realtors or other organizations.

OTHER BILLS**General District Court Jurisdiction**

The 2011 legislative session brought significant changes to the jurisdictional limits of the Virginia General District Courts. These are the courts that frequently hear most community association disputes regarding the collection of delinquent assessment accounts. House Bill 1950 and Senate Bill 774, which amend Sections [8.01-195.4](#), [16.1-77](#), [43-34](#), and [46.2-644.03](#) of the Virginia Code, increase the maximum civil jurisdictional monetary limits of the Virginia General District Courts from \$15,000 to \$25,000. In the past, if a claim for damages exceeded \$15,000, the plaintiff would have to file their lawsuit in the locality's Circuit Court, which requires drafting of pleadings and is a more complex and potentially costly process.

General District Courts in Virginia are not "courts of record" which means that any matter litigated in General District Court, if appealed, could be subject to an entirely new trial - de novo - at the Circuit Court level, meaning the case is heard without review of the previous ruling(s). General District Courts are generally the preferred venue for associations seeking collection of assessments because the timeline for commencement to final disposition of a case moves much more quickly than higher courts and there are less complicated procedural hurdles,

which can reduce the cost of litigation. This change to the jurisdictional limit is not likely to have a tremendous impact on the way associations handle their routine collections litigation, as most cases do not exceed even the previous \$15,000 jurisdictional limit. The greater impact is expected to be sustained within the internal operations of the General District Courts, which may see a greater processing backlog for new and existing cases, as more cases are permitted to be filed at the General District Court level due to the increase in jurisdictional monetary limits. These courts have already experienced a tremendous influx of litigation in recent years due to the troubled economy and certainly this amendment to its jurisdictional limits will do nothing to reduce the size or backlog of their case dockets.

HB 2289 and SB 1327 which amend Sections [16.1-77](#), [55-79.80:2](#), and [55-513](#) of the Virginia Code, significantly impact the equitable authority conveyed upon the General District Courts and will likely increase the variety of cases being heard at the General District Court level as well. These amendments allow a General District Court authority to hear cases relating to covenants violations, to order a violating owner to abate or remedy a violation, and to award reasonable attorney fees to the prevailing party in an action seeking to collect monetary charges assessed for a covenants violation. Previously, these sorts of cases seeking equitable relief were heard initially only in Circuit Court. Now associations have another avenue to file violation enforcement cases, which may be less costly and presumably less time-consuming. For any pending covenant enforcement cases, we recommend that our clients consult with legal counsel regarding whether to bring a suit in equity in General District Court or Circuit Court. We believe the appropriateness of General District Court as the initial court for any covenants enforcement case will vary depending on the specific circumstances in the case.

Limitation on Need for Liquor License

House Bill 1795, which amends Section [4.1-200](#) of the Virginia Code implements a significant change to the existing regulations related to alcoholic beverage control. Prior to the effective date of this provision, July 1, 2011, if an association or member wished to host a private event on its common area/element facilities or elsewhere, it was required to obtain a banquet license in order to serve alcohol at such event. As of July 1, 2011, no banquet license is required for private meetings or parties limited in attendance to members and guests of common interest communities (as defined by Section 54.1-2345), provided that, 1) the alcoholic beverage shall not be sold or charged for in any way, and 2) the premises where the beverages are consumed is limited to the common area regularly occupied and utilized for such private meetings or private parties.

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 department.