

Legislation Affecting Virginia Community Associations

By Lucia Anna Trigiani, Attorney at Law

The 2003 Session of the Virginia General Assembly convened on January 8, 2003, and adjourned on February 22, 2003. This was a "short session" of the General Assembly, lasting 46 days. Those were 46 very busy days, and nights, for the lawmakers and those of us who observe those lawmakers in action and who do our best to have input.

The General Assembly considered 3342 bills. This number includes 2825 bills introduced in the 2003 Session and 517 bills carried over for consideration from the 2002 Session. Just under half of the total bills considered (1646) were passed by the Senate and the House of Delegates.

During the 2003 Session, the Virginia Legislative Action Committee of Community Associations Institute ("VALAC") followed more than 36 bills. Ten of the 36 bills amend the Virginia Condominium Act, the Virginia Real Estate Cooperative Act, and the Virginia Property Owners' Association Act. All ten bills have been signed by the Governor and become effective July 1, 2003. Five of the bills were recommendations of the VALAC.

In addition to the ten bills that amend the laws that directly apply to, govern, and affect community associations, a number of other bills amend laws that are of interest to community associations. It has become equally important to understand and consider the impact of the laws that govern the collection of assessments, parking restrictions, real estate brokers, and fair housing. These other areas can significantly affect the operation and governance of community associations.

Meetings

The laws governing meetings have received much attention from Virginia legislators. Once again in this session, lawmakers directed atten-

tion to meetings of the Board, committees, and the association as well. It is important to note that the predominant number of changes in meeting requirements are almost exclusively limited to condominiums, with one exception.

Recording Board Meetings Under changes to both the Condominium Act and Property Owners' Association Act, a unit owner or lot owner may record any portion of a meeting of the association or Board of Directors. Under current law, unit owners and lot owners are restricted to audio recording. With the changes to these statutes, video recordings, or other recordings may be made by unit owners and lot owners.

Condominiums: Committee Meetings The Condominium Act was amended to provide that meetings of any subcommittee or other committee of the executive organ or the unit owners' association must be open to members of the unit owners' association. This bill does not amend the Property Owners' Association Act.

Condominiums: Quorum Requirements The Condominium Act was amended to allow additional flexibility for the draftsman in establishing the quorum requirements for meetings of the unit owners association. The bill reduces the minimum requirements that condominium bylaws may specify for a quorum from 25 percent to 10 percent. This legislation does not affect the quorum requirements of existing condominiums—unless the bylaws are amended to lower the quorum requirements, or merely make reference to the statutory minimum. This bill was a proposal of the VALAC.

Condominiums: Electronic Voting; Transmission of Notices The Condominium Act was amended to authorize notice of association meetings to be sent by electronic transmission if consented to by the unit owner and permitted by the condominium instruments or rules. Votes

and proxies also may be submitted by electronic transmission if authorized by the unit owner or the unit owner's proxy. An electronic transmission includes any form of communication, not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by the recipient, and that may be directly reproduced in paper form by the recipient through an automated process. Other changes to the notice provisions allow agents for officers of the association to send out meeting notices. This bill was a proposal of the VALAC.

Condominiums: Proxies Under other legislation proposed by the VALAC, the proxy provisions of the Condominium Act were amended to eliminate the requirement that signatures of unit owners on proxies be witnessed. Like other amendments to the Condominium Act, this change will have limited applicability if the bylaws provide for proxies to be witnessed, or even notarized—as was previously required by the Condominium Act, and which has since been removed from the statute.

Communication

The Condominium Act was amended to limit the ability of the Board of directors to control information disseminated in the community. The Board of Directors cannot require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners association. This limitation applies, except as otherwise provided in the condominium instruments.

Governing Document Amendments

In recent sessions of the General Assembly, there have been several attempts to assist property owners associations in efforts to make

amendments to the recorded governing documents. This legislation has been challenged because the law cannot modify the terms of existing contractual relationships—such as those created by the governing documents of a community association. Two legislators made another attempt to assist property owners associations where the governing documents are silent. Under this legislation, the declaration of a property owners association recorded prior to July 1, 1999, may be amended by agreement of two-thirds vote of the lot owners—again, only if the declaration is silent on how it may be amended.

Taxation

In 2002, the Virginia Real Estate Cooperative Act was amended to provide (i) that owners of interests in a cooperative are not deemed to be a business for any state and local purposes and (ii) that any tangible personal property owned by a residential cooperative association that would be considered household goods and personal effects if owned and used by an individual or by a family or household incident to maintaining an abode is considered household goods and personal effects owned and used by an individual or by a family or household incident to maintaining an abode for purposes of § 58.1-3504 and any local ordinance authorized thereby. The bill, considered during the 2003 Session, merely provides that amendments enacted by the

2002 Session of the General Assembly are declaratory of existing law.

Insurance

The challenging insurance market was not overlooked by the Virginia General Assembly. The VALAC proposed this bill to amend the Condominium Act to address responsibility for payment of insurance deductibles, a frequent issue for many communities. Except to the extent otherwise provided in the condominium instruments, any insurance deductible under the master casualty policy must be paid by the unit owners association as a common expense if the cause of the damage to or destruction of any portion of the condominium originated in or through the common elements. However, a unit owner is required to pay the deductible if the cause of any damage to or destruction of any portion of the condominium originated in or through a unit or any component thereof without regard to whether the unit owner was negligent.

Assessments

The Condominium Act was amended to address the authority of the Board to levy additional assessments—where the condominium instruments are silent. The Board may levy additional assessments if the Board determines that assessments are insufficient to cover the common expenses of the association.

The bill provides for written notice of the imposition of an additional assessment and provides that the unit owners' association may rescind or reduce the additional assessment. The bill is generally analogous to provisions in the Property Owners' Association Act that authorize the Board of Directors to levy special assessments and the association to rescind or reduce the special assessment. This bill was a proposal of the VALAC.

Property Owners' Association Act Applicability

A statutory provision that has generated questions since it was added to the Property Owners' Association Act in 1991 was removed from the statute—the \$150 threshold for determining whether an association is subject to the Property Owners' Association Act. With this change, the law will now be clear that if the development otherwise meets the definitions set forth in the statute, the association will be governed by the provisions of the Property Owners' Association Act.

Association Disclosure Packet

In recent years, as a result of amendments to the Property Owners' Association Act, the provisions of that statute regarding the delivery of the association disclosure packet have been misinterpreted to suggest that an owner need not request a packet from the association—and



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need only dust off the copy of the packet given to them and deliver that to the prospective purchaser. The General Assembly amended the Property Owners' Association Act to clarify again that the packet must be current and to define when an association packet is not available. The amendments regarding availability of the packet are made to assist the owner or real estate agent who may have difficulty in obtaining a packet from the association.

Other Legislation of Interest

Collection Issues Community associations must stay current with the laws that affect the civil procedures followed to collect unpaid assessments. Two bills of note in this area may be of some assistance to community associations. The General Assembly passed legislation to increase the processing fee that may be charged for bad checks from \$25 to \$35, and allows the recovery of reasonable attorneys' fees in addition to recovery of the face amount of the check. In addition, changes to the statutes regarding wage garnishment provide that wage garnishments are permitted to last up to 180 days, rather than 90 days as the law now permits.

Parking Lawmakers considered a number of measures concerning the authority of localities to regulate parking. The bills came from legislators representing a number of different locales in the state. The laws in this area are typically patchwork, conferring a variety of different levels of authority on the local governments. The several bills were ultimately consolidated. The result is that more counties, cities, and towns have authority to regulate parking. The amendments allow localities, by ordinance, to regulate or prohibit the parking of trailers, semi trailers, and vehicles that fit the definition of "commercial motor vehicle" in § 46.2-341.4. The bills also expanded the local authority, giving authority to all localities, again by ordinance to regulate or prohibit the parking, on any public highway in the county, of watercraft, boat trailers, motor homes, and camping trailers.

Real Estate Brokers The General Assembly passed legislation to increase the continuing education requirements for real estate licensees of the Real Estate Board from eight to 16 hours. The bill also imposes requirements on new licensees to complete 30 hours of specialized training in the first two years of licensure. That specialized training will include community association management and community association issues. The bill also authorizes the Board to establish procedures to ensure the quality of courses. The Governor recommended, and the General Assembly agreed, to add an emergency clause to this legislation—making this measure

law upon the Governor's signature.

Fair Housing A work group of the Virginia Housing Study Commission considered regulatory issues affecting the fair housing program currently administered by the Real Estate Board. The Commission recommended legislation and the General Assembly passed legislation that creates the Fair Housing Board at the Department of Professional and Occupational Regulation to administer and enforce the provisions of the Fair Housing Law. Currently, that authority is vested with the Real Estate Board. The bill sets out the membership and terms of the Fair

Housing Board. The bill authorizes the Fair Housing Board to establish, by regulation, an education-based certification or registration program, as the Board deems appropriate. The Fair Housing Board has no authority to discipline persons licensed by the Real Estate Board who violate the Fair Housing Law; this authority will remain with the Real Estate Board.

Flag Display Introduced during the 2002 Session, the bill proposed to declare rules of a property owners association restricting the display of the American flag void and unenforce-

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VIRGINIA COMMUNITY ASSOCIATION LEGISLATION 2003

The Bills

House Bill 1694 - Recording Board Meeting
 House Bill 1722 - Committee Meeting and Distribution of Material
 House Bill 1746 - Taxation of personal property
 *House Bill 1942 - Condominium Quorum Requirements
 House Bill 2034 - POA Declaration Amendment
 *House Bill 2213 - Condominium Insurance Deductible
 *House Bill 2216 - Condominium Additional Assessments
 *House Bill 2217 - POA Applicability and Disclosure Packet
 *House Bill 2634 - Condominium Electronic Voting
 Senate Bill 1122 - POA Declaration Amendment

The Patrons

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*indicates proposal by Virginia Legislative Action Committee of Community Associations Institute.

2003 VIRGINIA LEGISLATIVE CHECKLIST

Provided by Troutman Sanders LLP

It is essential to be aware of actions taken by the Virginia General Assembly to amend the laws that govern community associations. Following is a checklist of actions your community association should consider in order to prepare for changes to the Virginia laws that become effective July 1, 2003.

In preparation for the annual meeting, condominium unit owners associations should:

- ✓ Consider sending notice and accepting proxies electronically.
- ✓ Review bylaw proxy requirements and form proxy; modify witnessing requirements, if possible.
- ✓ If your community is a property owners association:
- ✓ Consult with association legal counsel to confirm that your community is governed by the Property Owners' Association Act.
- ✓ If you are considering amendments to your recorded covenants and restrictions and that document is silent about the requirements for amendment, your community may have improved ability to amend the covenants and restrictions.
- ✓ If your community is a condominium:
- ✓ Revise board meeting procedures to develop procedures for recording meetings.
- ✓ Review committee meeting procedures and develop procedures similar to procedures followed for Board meetings.
- ✓ Review insurance deductible provisions of condominium instruments and consider whether amendments to your insurance deductible policy are advisable.
- ✓ Review association meeting quorum requirements and consider whether to amend condominium instruments to take advantage of reduced quorum requirements.
- ✓ Evaluate whether amendments to the condominium instruments are advisable to incorporate new statutory provisions regarding electronic voting, proxies, insurance deductibles, and additional assessments.

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able as against public policy. The bill was carried over to the 2003 Session. The General Assembly did not act on the bill—and the bill failed.

Occupancy Restrictions The General Assembly considered two bills designed to address occupancy concerns. One of the bills was carried over from the 2002 Session; the second bill was introduced in the 2003 Session. Both bills attempted to address the issue through amendments to the Building Code. The bills failed, but are a clear indication of the search to address a difficult issue that has caused concerns for many communities.

Closing Thoughts

Statutory changes adopted by the 2003 Session of the Virginia General Assembly are significant, and require action by community associations to be in compliance when the laws take effect on July 1, 2003. To help you in your planning, we have developed a checklist of recommended action by community associations (editor's note: see page 15 for the checklist). We encourage you to consider that checklist carefully and work with association legal counsel and management to develop a clear understanding of how these changes to the law affect your community.

Pia Trigiani is a partner in the Tysons Corner office of Troutman Sanders LLP. She is a member of VALAC and is one of the registered lobbyists for VALAC. Pia also chairs the Chapter's Legislative Council and is a member of the Virginia Legislative Committee.

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flagpoles disproportionate to the size of the dwelling or lot. And, it would have allowed installation without regard to the safety of others or potential damage to association property.

In response to concerns raised by CAI's Maryland Legislative Action Committee, the legislation was amended by the lead bill-sponsor to permit associations and property owners to adopt reasonable regulations regarding the manner and placement of displaying the United States flag and flagpole.

Following a public hearing on the proposed flag bill, no further committee action was taken.

Legislative Potpourri

Legislation was also passed to authorize Charles County, Maryland to establish a homeowner association commission to hear and resolve disputes between homeowners and associations (House Bill 616).

Other legislation affecting community associations which was introduced but not passed included a bill to invalidate association covenants, bylaws and rules which prohibit the display of one portable, removable United States flag (House Bill 712).

A bill to authorize a court to award reasonable attorneys fees to a unit owner who prevails in a suit to enforce the Maryland Condominium Act or association governing documents was also killed in committee (Senate Bill 86).

Copies of Maryland legislation can be obtained from the Maryland General Assembly website, <http://mlis.state.md.us>.

Looking Ahead

In light of the many changes in Maryland political leadership this year, the MD LAC decided not to pursue priority lien legislation in 2003. However, the MD LAC has plans underway for

a priority lien bill in 2004. The legislation would give association assessment liens payoff priority for up to six months of assessments where a lender forecloses on a homeowner's loan. If your community would like to voice its support for this legislation, please call the Chapter office or members of the MD LAC.

Members of the CAI Maryland Legislative Action Committee are: Edithann Schaffer, Chair; Thomas C. Schild, Vice-Chair; R. Bruce Campbell; Julie Dymowski; Kathleen Elmore; Jason Fisher; Buck Mann; Chris Manougian; Sari McLeod; Susan Rapaport; Raymond Via; and Donna Zanetti.

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