

2002 Virginia General Assembly Report A Different Session

By Lucia Anna Trigiani

The 2002 Session

The 2002 Session of the Virginia General Assembly convened on January 9, 2002, and adjourned on March 9, 2002. This was a "long session" of the General Assembly, lasting 60 days. Much attention was given to adoption of the biennial budget and to developing new relationships. With the largest class of freshman legislators in the history of the General Assembly, it was a year filled with many new faces at the Capitol - 22 first-time legislators in the House of Delegates.

Session statistics reveal a significant reduction in the number of legislative measures considered. New rules restricting the number of measures a legislator could introduce and establishing early filing deadlines had an impact on the volume of bills. Bills moved through the committee structure more quickly, due in part to restructured and streamlined committees. In all, the General Assembly considered 2907 bills introduced this year. More than half of the total bills considered (1587) were passed by the Senate and the House of Delegates. A total of 517

bills were carried over for consideration during the 2003 Session.

We followed 11 bills on behalf of the community association industry. Eight of those bills proposed to amend the Virginia laws that govern and affect common interest ownership community associations. This fewer number of bills follows a trend that has been developing over the last several years. Several measures were modified substantially from initial introduction; two bills were carried over for consideration in 2003. One of the bills was carried over as a direct result of testimony by members of the community association industry. One of the bills was incorporated into a bill that did pass. One bill failed.

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Passed Legislation

Even though the number of bills passed by the Senate and the House during the 2002 Session of the General Assembly were fewer in number, their significance should not be overlooked. These measures become effective, July 1, 2002.

Condominium Board Member Qualifications - The Virginia Condominium Act currently provides that a member of the Board of Directors may be disqualified from serving on the board if the condominium instruments require that he be an owner and that board member sells his condominium unit or leases the unit for a term of six months or more. Under a bill introduced by Delegate Vincent F. Callahan, Jr. of McLean and Delegate L. Karen Darner of Arlington, a board member is no longer disqualified from serving on the board if he leases his unit. That officer will be disqualified if he sells his unit, but not if he leases it.

Taxation - Two bills were introduced to address taxation issues affecting community associations. Delegate Robert F. McDonnell of Virginia Beach introduced a bill that exempts from business, professional, and occupation license taxes ("BPOL" taxes) assessments paid by condominium unit owners for common expenses. Apparently the assessment income of some condominium unit owners associations had been taxed in Virginia Beach, where local governments have become creative in searching for new revenue sources. Unfortunately, the

2002 VIRGINIA LEGISLATIVE CHECKLIST

By Lucia Anna Trigiani

It is essential to be aware of actions taken by the Virginia General Assembly to amend the laws that govern community associations. The following is a checklist of actions your community association should consider to prepare for changes to the Virginia laws that become effective July 1, 2002.

- In preparation for the annual meeting, condominium unit owners associations should carefully consider residency qualifications for serving on the board of directors.
- Perform an annual audit of your standard form certificate for resale and association disclosure packet and consider:
- The viability of providing the certificate or packet via electronic means.
- Your fee schedule for providing copies of the certificate or packet.
- Your procedures for rush requests of the

certificate or packet.

- Revise your due process procedures to provide that the hearing determination will be provided within seven days of the hearing.
- If your community is subject to the Property Owners' Association Act, revise your standard form and procedures for preparation of the association disclosure packet to include the one-page cover page developed by the Virginia Real Estate Board.
- Consider your association's reserve policies and establish a schedule for conducting a reserve analysis, if you do not have a current policy on reserves.
- If your community association is incorporated, consider how notice of meetings and voting may be handled by electronic transmission.

bill does not address taxation of the assessment income of property owners associations - legislation will likely follow.

Another bill addresses a similar taxation issue with respect to personal property owned by a real estate cooperative. Introduced by Delegate Terrie L. Suit of Virginia Beach, the bill provides that a residential cooperative association is not deemed a business for certain state and local taxation purposes. Delegate Suit's bill also requires that any tangible personal property owned by a real estate cooperative association is considered household goods and personal effects, thereby making that property eligible for an exemption from local tangible personal property taxes.

Resale Disclosure - Again this year, the resale disclosure provisions of both the Condominium Act and the Property Owners' Association Act were amended. This bill was introduced by Senator William C. Mims, at the request of the Virginia Legislative Action Committee of Community Associations Institute (VLAC). The changes to the Condominium Act and the Property Owners' Associations Act incorporate changes designed to facilitate the ability of Associations to provide resale disclosure.

With the consent of the purchaser, the certificate for resale or the association disclosure

packet may be provided electronically. This means that associations will be able to provide the resale certificate or association disclosure packet on disc.

The legislation also authorizes an association to charge a rush fee for delivery of the resale certificate or the association disclosure packet. A "rush" is defined in the statute as being provided within three business days of a request. The rush fee is limited to \$25.00 plus the cost of mailing or delivery. In related changes, the statutes were amended to clarify also that the costs of mailing or delivering these disclosures may be recovered by the association and are in addition to the \$100.00 cap on providing the association disclosure.

Additionally, an association cannot require that payment of a resale disclosure fee be made by certified funds unless the owner's assessments are more than thirty days delinquent or the owner has tendered to the association a check with insufficient funds within the past six months.

A number of communities have not been getting information about new purchasers because of the recently enacted Gramm Leach Bliley Act. That federal statute establishes limitations on the disclosure of financial information by banking and other institutions. In order to address the need to get information, the re-

sale certificate and the association disclosure packet provisions were amended to require a settlement agent to provide information to community associations. The settlement agent must provide:

- The name of the seller.
- The name and address of the purchaser.
- The address of the property.
- The date of settlement.
- A brief explanation of the application of any funds that are being transmitted.

The settlement agent may provide that HUD -1 (as has been the practice for years) unless otherwise prohibited. This requirement would only seem to apply when the settlement agent is transmitting funds to an association. More likely than not, the settlement agent will be collecting funds at settlement, but in those instances where funds are not being transmitted, these changes do not require the settlement agent to provide that information.

In a separate bill, Delegate Terrie L. Suit added language to the Property Owners' Association Act to clarify that the association disclosure packet must contain the fully completed one-page form that the real estate board is required to develop and contains certain about property owners associations.

Electronic Notice and Voting - The stock and non stock corporation laws were amend-



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ed by a bill introduced by Harvey B. Morgan of Gloucester. Delegate Morgan's bill allows meeting notices for stock and nonstock corporations to be given by electronic transmission. In addition, votes of shareholders or members may be submitted by electronic transmission if authorized by the corporation's board of directors.

This bill is helpful only to those associations that are incorporated. The bill also defines electronic transmission. That definition presumes that the means of communication is one whereby a record may be created, retained, retrieved and reviewed by the recipient. The bill also makes reference to the Uniform Electronic Transmissions Act and calls upon the definitions of that statute to be incorporated into the measure. Please note that also that this statutory change imposes certain requirements upon delivery of those notices.

This new means for notice and voting may be helpful to incorporated community associations. Community associations interested in taking advantage of electronic notice voting should consider the changes in light of governing document provisions regarding voting and meeting notice.

Rule Enforcement - Included in the bill in-

roduced by Senator Mims on behalf of the VALAC were changes to the requirements concerning delivering of hearing results following a due process procedure hearing under both the Condominium Act and the Property Owners Association Act. There was substantial concern among the Association s about the shortness of the three-business day delivery requirement. That provision has been changed to allow the hearing results to be delivered within seven days of the hearing. Those hearing results must either be delivered by hand delivery or certified or registered mail.

Reserves - As a result of the Housing Study Commission study on reserves which was continued from the 2001 Session of the General Assembly, Senator Mims, who chairs the Housing Study Commission, introduced a bill requiring boards to conduct a reserves study. The bill requires an Association to conduct a reserve study at least once every five years to determine the necessity and amount of reserves required to repair, replace and restore capital components. Associations are required to review the results of that study annually to determine whether reserves are sufficient and to make adjustments as the board of directors determines necessary and appropriate.

The bill also defines capital components as items, whether or not part of the common elements or common area, for which the association has the obligation for repair, replacement or restoration and for which the Board determines that funding is necessary.

These new requirements concerning reserves apply except to the extent otherwise provided in the governing documents for the association and unless those governing documents impose more stringent requirements. This legislation was the most significant of the session.

Failed Legislation

One bill was introduced that could have had significant impact on Associations and disclosures of information to Association members. Delegate Darner from Arlington proposed a bill to require the release of employee salary information to members of the Association. Well known as a hot and debatable topic, the General Assembly rejected the measure. By rejecting the change, the actions of the General Assembly affirms the current interpretation given to this statutory provision – that salary information may be released to members but only in aggregate form. In other words, an association need not provide the salary information for

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a particular employee; the association need only provide the total line item.

Carried Over Legislation

Two bills were carried over for consideration in the 2003 Session. Each of these bills is also fairly significant and will be bills that we follow in the new Session and the intervening time period between sessions when action may be taken on the bills.

Flag Display - Delegate Riley Ingram and Colonial Heights introduced a bill to provide that provisions of recorded governing documents, the Bylaws or Rules and Regulations enacted by the Board concerning and restricting the display of the American Flag are void and unenforceable as against public policy. There was a limitation on the applicability of the bill to relate to the effective date of the law, had the bill been passed. The General Assembly delayed consideration of the bill pending the outcome of the Wyndam Flag case in Richmond. That case was under appeal to the Virginia Supreme Court. The Supreme Court has denied the appeal and will not hear the matter. The Bill may be appealed further to the United States Supreme Court, this is an area we should continue to watch.


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substantially fewer than in prior years, **the significance of the legislation that will become law on July 1, 2002 should not be overlooked.**

Occupancy Restrictions - Delegate Vivian Watts of Annandale introduced a bill to provide that enabling legislation for localities to adopt zoning ordinance restrictions on the number of adults residing in a dwelling unit based on the size of the lot and that zoning category. The bill was given some attention, but was delayed for consideration in the new session.

Summary

Although the number of bills passed by the Virginia General Assembly is substantially fewer than in prior years, the significance of the legislation that will become law on July 1, 2002 should

not be overlooked. As in years past, community associations should give careful consideration to the effect of the statutory changes on association governance and operations. Special attention should be given to resale disclosure procedures and to reserve policy. 

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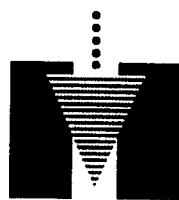
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