



2004 VIRGINIA LEGISLATIVE REPORT

Legislation Affecting Virginia Community Associations

Lucia Anna Trigiani, Attorney at Law

The 2004 Session of the Virginia General Assembly convened on January 14, 2004, and adjourned on March 13, 2004. This was a "long session" of the General Assembly, lasting 60 days. The state budget was the matter of business that drew the most attention from legislators, the press and citizens of Virginia. For the first time in the history of Virginia legislature, the General Assembly could not agree on a budget during the Regular Session, necessitating a Special Session that convened on March 17, 2004 and concluded in early May.

In all, a total of 3,006 bills were introduced and considered during the 2004 Session. Just over half of the bills, 1,715 of the bills considered, were passed by both the Senate and the House of Delegates and forwarded to the Governor for signature. A total of 866 bills failed. An additional 425 bills were continued to the 2005 Session. These carried over bills must be acted upon by Committee no later than December 10, 2004. Included in those carried over bills are several bills affecting community associations.

The General Assembly was presented with a number of bills affecting community associations for consideration. The Virginia Legislative Action Committee ("VALAC") monitored 14 bills amending the laws that directly affect community associations. While not all of these bills were successful, there are several significant changes in the laws affecting community associations about which community associations should be aware. And, there will be further discussion about some of the unsuccessful measures as indicated above.

The changes in the law enacted during the 2004 Session become effective July 1, 2004.

Lien Foreclosure. Three of the bills considered during the 2004 Session modify the Virginia Condominium Act and Virginia Property Owners' Association Act foreclosure provisions. Two of the bills were recommendations of the VALAC, which worked with the Virginia Bar Association Real Estate Council to develop the legislation. The primary goal was to address non-judicial foreclosure provisions of those statutes.

The changes adopted by the General Assembly are significant, but do not address the Virginia Supreme Court decision in *Wachovia v. Colchester*. The VALAC will continue to work with representatives of the banking industry to address the concerns that have arisen as a result of that Virginia Supreme court case.

Following are brief highlights of the changes.

Effectiveness of Lien - The time period for initiating foreclosure actions (enforcing the assessment lien) - whether via judicial or non-judicial means - is increased from 24 to 36 months. This change allows associations additional time to commence foreclosure proceedings. In those cases where associations were prematurely pursuing foreclosure, extending this time period should be a helpful change to both the delinquent owner and the association. Foreclosure should be a last resort remedy.

Clear Title - Since enactment of the legislation authorizing non-judicial foreclosure, there have been questions about title to the unit or lot sold in foreclosure. The amendments adopted during the 2004 Session clarify the authority of an association both to sell and to convey a unit, designating the association as the unit or lot owner's statutory agent for

Foreclosure Changes . . . At-A-Glance

1. The time for initiating foreclosure is extended from 24 to 36 months.
2. The unit or lot owner must be given 60-days notice before advertising the foreclosure sale. The 60-day notice must contain:
 - The amount due the association.
 - A description of the effect of failing to satisfy the debt due the association.
 - A statement that the owner has a right to bring court action.
3. A trustee must be appointed to conduct the sale.
4. The association's authority to bid on the unit or lot is clarified and confirmed.
5. Foreclosure sale expenses include advertising and reasonable attorneys' fees.
6. The association must prepare an accounting and file the accounting with the Commissioner of Accounts.

the purpose of transferring title to the unit. The legislation also provides that the association may appoint a trustee to conduct the foreclosure sale, thereby designating an independent person or entity to conduct the foreclosure. The appointment of the trustee must be recorded among the land records.

Notice Requirements - The legislation imposes on associations additional notice requirements before the commencement of advertising, specifying the nature of the disclosures that must be contained in notice. Those disclosures include a specific reference to the amount due the association as well as the action that will be necessary by the owner to satisfy the debt. The notice must give the unit or lot owner 60 days from the date of the notice to take that action. The notice also must include additional disclosures about the effect of failing to satisfy the debt and that the unit owner that the unit or lot owner has the right to bring court action.

Advertising - The statutory provisions concerning advertising are modified to require that the foreclosure sale advertisement include the name, address, and telephone number of the trustee.

Owner Remedies - The legislation provides that foreclosure action must be halted if the unit or lot owner meets certain conditions - satisfying the debt secured by the lien and paying all expenses and costs, including advertising costs and reasonable attorneys' fees.

Qualified Bidders - The legislation removes the prohibition against members of the association bidding at the foreclosure sale. Only the trustee is prohibited from making a bid. The association is specifically authorized to bid to purchase the unit, unless the governing documents for the association prohibit such action by the association.

Accounting - The association is required under the legislation to file an accounting of the foreclosure sale with the Commissioner of Accounts. The association is required to maintain a copy of the accounting for at

least twelve months following the foreclosure sale. This third party review ensures that the proceeds of the foreclosure are properly disbursed.

The bills add substantial protections for individual unit or lot owners which may be perceived hurdles to a community association which wishes to pursue foreclosure via non-judicial means. However, the changes strike an important balance between ensuring the owners meet their obligations and providing a means for community associations to enforce more obligations, should the unit or lot owner fail to do so.

Terms of Directors. The VALAC sought amendments to the Non-stock Corporation Act to clarify an inconsistency in the provisions addressing directors' terms of office. If the articles of incorporation of a nonstock corporation are silent, the term of a director elected or appointed by the board to fill a vacancy expires at the next meeting at which directors are elected.

Insurance Deductible. During the 2003 Session of Virginia General Assembly, through the efforts of the VALAC, the Condominium Act was amended to address the responsibility to pay the insurance deductibles making a unit owner strictly liable if the cause of damage or destruction to any portion of the condominium originated in or through a condition in a unit. Based on concerns about the availability of insurance coverage, two professional groups representing insurance agents lobbied intensely during the 2004 Session to remove the language that had been added to the Condominium Act. The insurance lobby was successful in their efforts.

The removal of this language from the Condominium Act creates interpretation issues that may be adverse to many condominium unit owners associations. Unless the bylaws of the association specifically address the insurance deductible, associations may wish to consider to amendments to the bylaws to address this sometimes prickly issue.

Books and Records. The Property Owners' Association Act was

FROM CAI'S PROFESSIONAL MANAGEMENT DEVELOPMENT PROGRAM

**MANAGERS—
SPACE IS LIMITED—RESERVE YOUR PLACE NOW!**

M-205 Risk Management

> > > > > > Are you adequately prepared for the future?

CAI has solutions to help protect your association from risk. Building your skills and knowledge in the area of risk management can make a significant difference on how your community fares when you have an insurance claim.

Risk Management will teach you how to identify your current risk-management situation and respond to issues needing immediate attention. Take this course to strengthen your community's position and prepare to reduce and react to possible loss.

DON'T WAIT—one class could make the difference between long hours and unfavorable outcomes or success!

**For course dates, locations, and descriptions call CAI Direct
at 703-548-8600 or visit www.caisecure.net.pmdp.mv.**



2004 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, 2004.

- Modify procedures and forms used in pursuing non-judicial foreclosure to enforce condominium and property owners association assessment liens.
- Check notice requirements and modify form notice.
- Modify standard advertising text.

If your community is a property owners association:

- Review committee meeting procedures and develop procedures for committee meetings similar to procedures followed for Board meetings.
- Board meeting minutes must be made available to lot owners, even if in draft form, no later than 60 days after the Board meeting or when delivered to Board members in the agenda package, whichever occurs first.

If your community is a condominium:

- Review insurance deductible provisions of condominium instruments and consider whether amendments to the condominium instruments or your insurance deductible policy are advisable.

amended in response to concerns about the demand for release of draft minutes from meetings of board of directors. Under the new legislation, draft minutes are open for inspection and copying within sixty days from the conclusion of the meeting for which the minutes are being prepared or when the minutes are distributed to board members as part of the agenda package for the next meeting of the board of directors, whichever occurs first. Property owners associations should be particularly attentive to preparing minutes and having the drafts available for review by individual owners. Take special note, similar provisions of the Condominium Act, which was not amended, are significantly different.

Committee Meetings. As predicted, the Property Owners' Association Act was amended to conform to similar provisions of the Condominium Act. Last year, the Condominium Act was amended to provide that meetings of any sub-committee or other committee of the board of directors would be open to members of record of the association. These changes have now been incorporated into the Property Owners' Association Act, making committee meetings subject to the same open meeting requirements applicable to boards of directors.

Failed and Carried Over Legislation

Perhaps most significant during the 2004 legislative season were two bills addressing resale disclosure. The VALAC spent considerable time lobbying for and against two bills addressing resale disclosure.

The first bill was proposed by the VALAC. The bill proposed to increase the fee that may be charged for preparation of the resale certificate and association disclosure packet. The proposed increase was met with substantial opposition, primarily from the real estate industry. This bill was hotly debated in the Senate General Laws Committee where the Committee voted not to report the bill by a substantial majority. →



business to business & person to person

You're looking for a partner with comprehensive financial solutions. You're looking for someone to help you meet your goals. To help you take advantage of opportunities. Someone who understands your strengths and weaknesses, and who knows what will work for you – and when. You're looking for a partner who is both reliable and responsive.

You've just found one.

*Proud to be named the nation's #1
Small Business Friendly bank.*

Tom Durrer (703) 442-4010

BB&T

You can tell we want your business.

www.BB&T.com

Member FDIC

Insurance Services

Credit Solutions

Treasury Services

Deposit Services

Capital Markets

Institutional Trust

Online Banking

Private Banking

The second bill addresses the contents of the resale certificate and association disclosure packet and was carried over for study. The legislation proposed to expand the nature of disclosure contained in the resale certificate and the association disclosure packet. Under the proposed legislation, an association would have been required by a lender to provide information necessary for borrower to provide to the lender as a condition precedent to the settlement of a mortgage loan. The bill would have placed a seven-day limit on the delivery of that information and that information would be provided at no charge. These changes are considered burdensome to community associations.

The VALAC expressed opposition and with the help of a grass roots effort by community associations and their management agents, the bill was carried over for consideration during the 2005 Session. The bill will be considered by the Virginia Housing Study Commission and must be acted upon in the House General Laws Committee which voted to carry over the bill no later than December 10, 2004.

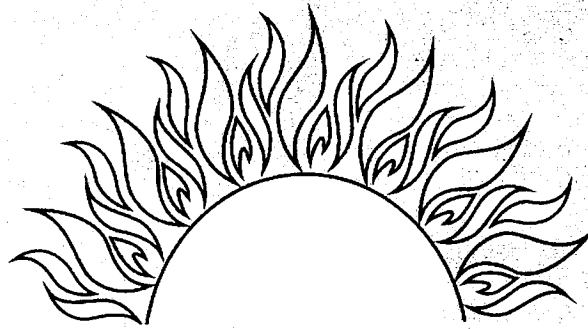
Summary

Some would consider the 2004 Session a very challenging session for community associations. Negative overtones about community associations and their operation were prevalent even though community associations are home to many Virginians. We believe these impressions and the reaction to legislation benefiting community associations a serious step backwards.

It is important that each community and its management agent work to disabuse legislators of these negative notions about community associations. We all must promote the positive aspects of community association living and the many good works and essential services provided to the residents of community association. Correcting this negative image is not something that can happen overnight and will require the efforts of all facets of the industry.

There were many good things that happened for community associations in this Session of the Virginia General Assembly, not the least of which are the amendments to non-judicial foreclosure provisions. These are significant, positive changes that speak well of the industry and its concern that foreclosure be carefully considered before it is initiated. What we have done in Virginia should be a model for other states.

Lucia Anna ("Pia") Trigiani is a partner in the Tyson's Corner office of Troutman Sanders LLP. She is a member and a registered lobbyist of the VA LAC. Pia chairs the WMCCAI Chapter's Legislative Council and is a member of the Virginia Legislative Committee.



A Golden Opportunity to Share Your Vision and Expertise

By Petrine Squires, CMCA, PCAM, RPM and Tom Willis, CMCA, PCAM

"Expand Our Horizons" Call for Presentations

2005 Conference & Expo Washington Convention Center March 5, 2005

We are fortunate to have some of the very best and brightest professionals **in the country** serving the community association industry right here in the Washington Metropolitan area. So many have so much to share. Are you one?

Hundreds of decision makers attend the WMCCAI Conference & Expo each year to learn, to grow, and to equip themselves to successfully handle the dynamic challenges of our industry. Can you help them?

You are invited to submit a proposal for the WMCCAI 2005 Conference & Expo taking place at the Washington Convention Center on March 5, 2005. We are looking for fresh ideas and intriguing topics that are

applicable to professionals, homeowners, and board members. The Call for Presentations can be viewed on the Chapter Web site.

You may have already read a broadcast email inviting you to submit your proposal to present at the Conference. Don't miss this opportunity. Proposals are already coming in!

The deadline is July 1, 2004.

Petrine Squires, CMCA, PCAM, RPM, works for the Polinger Shannon & Luchs Company and is a Conference & Expo Committee member. Tom Willis, CMCA, PCAM, of Zalko Realty, Inc. is the Conference & Expo Committee Chair.

HEART

NATIONAL CORPORATION

The Leader in Industrial Cleaning Technology

Building Services



Trash Chute Cleaning
Carpet Cleaning
Garage Cleaning
Janitorial
General Pressure Washing
Bulk Trash Pick-Up

Introducing Our New Affiliate:

BIO DUCT

THE BIOLOGY OF DUCT CLEANING
HVAC Duct Cleaning

- Dryer Duct Cleaning
- Advanced HEPA Technology
- Removes 99.97% of particulates As small as 0.3 microns in size
- Enviro Con™ Application (EPA Registered): Bacteriostat, Fungistat & All-purpose Deodorizer
- Our Cleaning Systems meet or Exceed EPA, OSHA and NADCA Standards

Heart National and Bio Duct Corporation
Phone: 703-690-5046 Fax: 703-492-2770