

Community Association Legislative Update — 2007 Session of the Virginia General Assembly

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The 2007 Session of the Virginia General Assembly began on January 10, 2007 and ended on February 24, 2007. This was a "short session" of the General Assembly, during which amendments to the state budget were under consideration with a particular focus on transportation funding.

In the 2007 Session, the Virginia Legislative Action Committee of Community Associations Institute (VALAC) monitored more than 20 bills introduced in the House of Delegates and the Senate affecting laws of interest to community associations. Again this year, thanks to success in relationship building with legislators and different real estate related industry representatives, the VALAC was able to support legislation and defeat legislation in cooperation with a variety of interest groups.

Following is a summary of the significant bills followed by the VALAC. Bills passed and enacted become effective on July 1,

2007. While these summaries offer a general review of legislation, you should review the legislation and consult with association legal counsel on the import of each bill.

Passed Legislation

Resale Certificates and Association Disclosure Packets.

Perhaps the most significant legislation affecting Virginia community associations were two bills imposing new requirements on maintenance of association funds, insurance, and resale disclosure. The General Assembly enacted legislation which requires any managing agent of a condominium and property owners association to keep funds deposited with the managing agent in fiduciary trust accounts in a federally insured financial institution, and to keep such funds segregated from other assets of the managing agent or other communities. The legislation also requires associa-

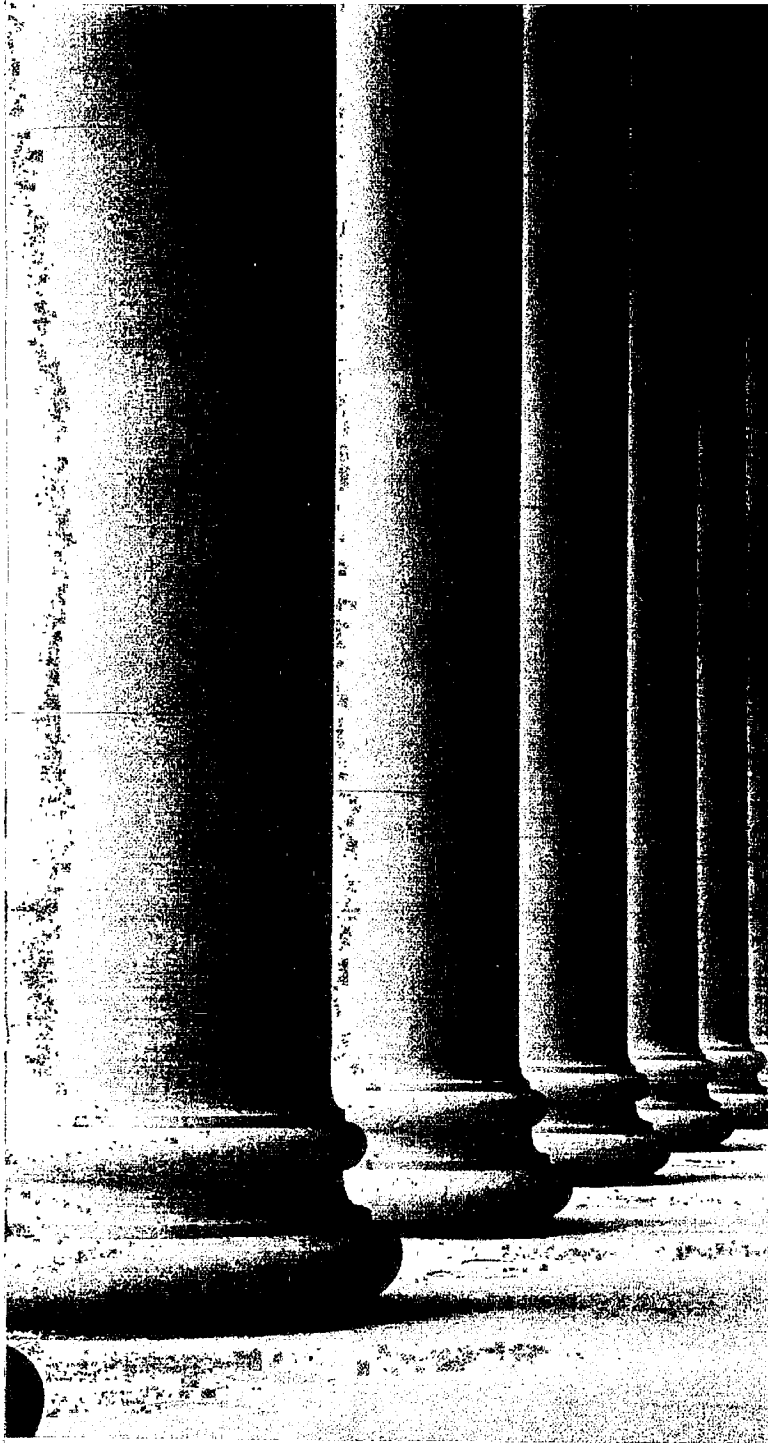
2007 Virginia General Assembly Legislative Update

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, 2007.

- Review restrictions and develop rules to permit the display of the United States flag in units, limited common elements, or lots.
- Confirm with the association management firm that all bank accounts are properly titled – as fiduciary trust accounts that are federally insured, separate from other association or management accounts.
- If your community is professionally managed, in order for management to collect more than \$100.00 and up to \$325.00 for the

preparation of a certificate for resale or association disclosure packet:

- The management contract must specify the amount that may be charged.
- Post the amount of the fee on the association and management company Web site.
- Calculate the actual costs of preparing the certificate or packet.
- Check current insurance coverage to make certain that the association has a blanket fidelity bond or employee dishonesty policy with a minimum \$10,000.00 coverage.
- Update the certificate for resale and association disclosure packet form to:
 - Ensure disclosure of flag restrictions.
 - Ensure disclosure of the balance on any current loan.



The [resale certificate] legislation allows condominium and property owners associations to collect a fee for preparation of a resale certificate or an association disclosure packet, if the fee is established in the contract between the association and the managing agent and the fee is disclosed on the Web site of either the association or the managing agent.

tions to obtain a blanket fidelity bond or employee dishonesty insurance policy in a minimum amount of \$10,000.

The legislation allows condominium and property owners associations to collect a fee for preparation of a resale certificate or an association disclosure packet, if the fee is established in the contract between the association and the managing agent and the fee is disclosed on the Web site of either the association or the managing agent. The bill requires an association to make prompt payment of the fee to the managing agent who furnishes the resale certificate or association disclosure packet. The bill allows the association to deliver the resale certificate or association disclosure packet by electronic means unless the purchaser or seller requests a paper copy. Currently, delivery by electronic means can only be done with the consent of the seller or purchaser.

Fair Housing Board. In legislation recommended by the apartment management industry, membership of the Fair Housing Board is increased to include a member of a property owners association or condominium unit owners association.

Display of the U.S. Flag. The General Assembly enacted legislation consistent with the Federal Flag Act enacted by Congress in July 2006. The legislation amends the Condominium Act and the Property Owners' Association Act to provide that no condominium instrument or declaration shall restrict or prohibit the display of the flag of the United States by a unit or lot owner.

The bill provides, however, that an association may restrict the display of the U.S. flag in the common areas and may establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag. The bill also requires the public offering statement, resale certificate, or association disclosure packet to contain a statement of any restrictions on the size, place, duration, and manner of placement of the flag. This bill is a recommendation of the Virginia Housing Commission.

Meeting Notice. Recommended by the VALAC, the General Assembly passed legislation to amend the Condominium Act to authorize notice of unit owners association meetings to be sent either by United States mail to all unit owners of record at the address of their respective units or to such other addresses as any of them may have designated to such officer or his agent, in addition to the option of hand delivery of such notices. The bill contains technical amendments fixing nomenclature specific to the Condominium Act.

Assignment of Tenant Rights in Condominium Conversions. Two bills carried over from the 2006 Session of the General Assembly were considered by the Virginia Housing Commission in the interim between sessions. After considering the positions of the stakeholders, the Commission proposed legislation to allow disabled or elderly tenants to assign special tenant rights, including the exclusive right to purchase the unit, to a government agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent.

The legislation provides that the acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (i) exceed the greater of one unit or five percent of the total number of units in the condominium or (ii) impede the condominium conversion process. The bill also defines affordable rent and certified nonprofit housing corporation.

Defeated Legislation

Display of Political Signs. The Virginia Housing Commission also considered legislation from the 2006 Session which sought to

abrogate restrictive covenants and association rules that restrict or prohibit the display of political signs. The Commission did not recommend amendments because of concerns that such legislation is unconstitutional.

Even so, advocates for political signs promoted legislation and a bill was introduced that would have provided that, notwithstanding any provision in a declaration, no declaration or association's rules and regulations or architectural guidelines shall restrict or prohibit the display by a lot owner on his lot of a candidate sign or a sign that advertises the support or defeat of any question submitted to the voters in accordance with state election law.

The VALAC placed a *Call to Action* to CAI membership to voice opposition to this proposed legislation. Communications from hundreds of CAI members were strategic in encouraging the patron of the bill to withdraw the bill from consideration. This is the perfect example of our industry successfully responding to matters that affect our communities.


Looking Back and Looking Forward

While the 2007 Session of the General Assembly was a much better session for community associations, advocates had to remain vigilant to the legislative process as the bills were debated and considered. With the help of other interest groups, the community association industry was able to support and to do away with legislation. The VALAC continues its efforts to promote good legislation and to oppose legislation contrary to interests of community leadership and members.

The Virginia Housing Commission has again designated a work group to consider community association legislation. The work

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group will meet in preparation for the 2008 session to develop legislation to regulate the community management industry. The VALAC will be represented in those discussions. ☐



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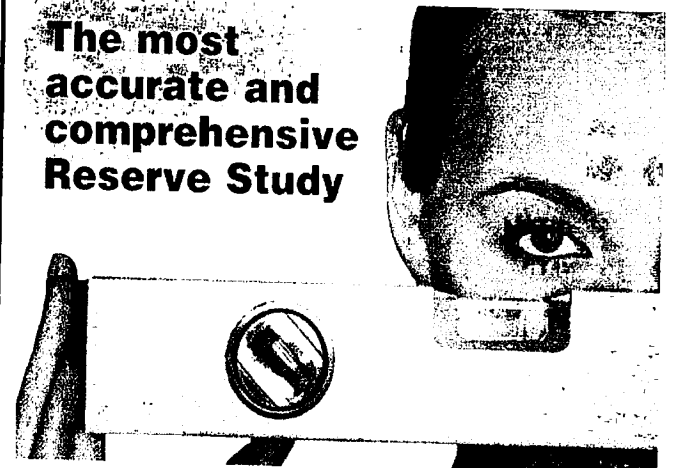
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