

April 2000

Virginia Legislative Changes

By: Edward J. O'Connell, III
Todd A. Sinkins

The General Assembly passed a number of significant bills this session which affect property owners' associations and condominium associations. The General Assembly also referred several important issues to the Virginia Housing Commission for study and reporting back to the Assembly, so the Assembly can review the issues again in 2001.

The bills will take effect on July 1, 2000, if and when the Governor signs them. Based on reports we have received from the Governor's office, we anticipate that the Governor will not veto any of the bills approved by the General Assembly.

The following is a brief summary of these various legislative changes.

LEGISLATIVE CHANGES WHICH AFFECT CONDOMINIUM ASSOCIATIONS ONLY

The General Assembly passed House Joint Resolution 253, which, in pertinent part, directs the Virginia Housing Study Commission to study whether the General Assembly should impose more specific regulations upon condominium associations to require the adequacy of reserve funds established for the replacement of the common elements after their useful life expires.

The General Assembly passed a bill which obligates the Board to provide (i) written notice of its

meetings, including special meetings of the Board, to a unit owner who requests such notice in writing and, if so, (ii) at least one copy of its agenda packets to the requesting owner at the same time and in the same manner the Association furnishes such documents to the Board. The bill also prohibits the Board from voting by secret ballot on any matter, except for the election of officers.

In addition, this bill also requires that at least two Board members must be physically present together at the meeting place stated in the notice of the meeting if the Board conducts a meeting by telephone, video conference, or similar electronic means. (The intent of this bill appears to be aimed at Boards which reportedly were regularly voting on matters by e-mail.) The bill also requires the technological means of communication to be of a nature so that any member of the Association in attendance at the meeting may hear the Board's discussion at the meeting. This bill also requires the Board to provide a designated time during its meeting to allow unit owners to present comments to the Board.

This bill also limits the time period of continuing special charges that a Board may impose as a sanction for any offense of a continuing nature to 90 days and requires the Association to hand-deliver or mail by registered or certified mail the results of the hearing to the member within three days of the decision.

This bill also amends the section of the Code which regulates the Board's powers to keep certain documents confidential. Per this bill, the Association may withhold only the following documents from the Association's members:

1. Association documents which relate to a person's medical records or condition.
2. Association documents which relate to (1) contracts, lease, and other commercial transactions currently in or under negotiation; (2) pending or probable litigation; (3) matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations; or (4) any communication which is protected by the attorney-client privilege or the attorney work product doctrine.
3. Meeting minutes or other confidential records of an executive session of the board of directors, so long as the executive session concerned personnel matters, consultation with legal counsel, discussion of contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations, or discussion of the personal liability of members to the association.
4. Disclosure of information, which, if disclosed, would constitute a violation of other laws, such as privacy protection statutes.
5. Individual member files, other than those of the requesting member.

LEGISLATIVE CHANGES WHICH AFFECT HOMEOWNERS ASSOCIATIONS ONLY

The General Assembly passed a bill which requires the Virginia Real Estate Board to develop and disseminate a one-page form to registered community associations which community associations will be required to insert in their disclosure packets. The form will require community association officials to summarize the unique characteristics of their association and to make known to prospective

purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including, but not limited to, (i) the obligation of a lot owner to pay regular annual or special assessments to the association, and the penalty for failure/refusal to pay such assessments; (ii) the purposes for which such assessments may be used; and (iii) the importance the declaration of restrictive covenants and other governing documents play in association living. For reasons that are unclear (probably inadvertence), the General Assembly applied the law to property owners' associations only. It does not apply to condominium associations.

The General Assembly passed a bill which requires the Association to disclose any regulations relating to flag displays, including, but not limited to, reasonable restrictions as to size, place, and manner of placement or display in the association's disclosure packet. The bill also provides that a community association may not restrict its members from displaying the flag of (i) the United States, (ii) the Commonwealth, (iii) any active branch of the armed forces of the United States, or (iv) any military valor or service award of the United States, unless the Association specifically discloses the restriction in the disclosure packet.

The General Assembly passed a bill which requires the Board to provide a designated period of time during its meeting to allow members of the association to present comments to the Board. In addition, this bill also requires that at least two Board members must be physically present together at the meeting place stated in the notice of the meeting if the Board conducts a meeting by telephone, video conference, or similar electronic means. (The intent of this bill appears to be aimed at Boards which reportedly were regularly voting on matters by e-mail.) The bill also requires the technological means of communication to be of a nature so that any member of the Association in attendance at the meeting may hear the Board's discussion at the meeting.

This bill also amends the section of the Code which regulates the Board's powers to keep certain documents confidential. Per this bill, the Association may withhold only the following documents from the Association's members:

1. Association documents which relate to a person's medical records or condition.
2. Association documents which relate to (1) contracts, lease, and other commercial transactions currently in or under negotiation; (2) pending or probable litigation; (3) matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55-513; or (4) any communication which is protected by the attorney-client privilege or the attorney work product doctrine.
3. Meeting minutes or other confidential records of an executive session of the board of directors, so long as the executive session concerned personnel matters, consultation with legal counsel, discussion of contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations, or discussion of the personal liability of members to the association.
4. Disclosure of information, which, if disclosed, would constitute a violation of other laws, such as privacy protection statutes.
5. Individual member files, other than those of the requesting member.

LEGISLATIVE CHANGES WHICH AFFECT BOTH CONDOMINIUM ASSOCIATIONS AND HOMEOWNERS ASSOCIATIONS

The General Assembly passed a bill requiring the Housing Study Commission to study the operations of community associations in order determine whether the General Assembly should grant the Virginia Real Estate Board with a) jurisdiction over community associations to hear complaints filed by

members against their community association and b) power to impose fines of up to \$2,500 against Board members, managers, or other professionals who violate the law. We will continue to keep our clients informed about this bill, as we believe such legislation, if enacted, would have a tremendously negative impact upon volunteerism with community associations. We strongly recommend that the Boards of our community association clients go on record with their elected representative to **oppose** the concept of the General Assembly granting the Virginia Real Estate Board with jurisdiction over community associations.

The General Assembly passed a bill which provides community associations with the right to obtain the names and addresses of parties holding mortgages within the community association when a community association submits a written request to the Tax Department stating that the association needs the information for the purpose of amending its legal documents. This information has not always been easy to obtain. With the passage of this bill, it will make matters much easier for community associations to obtain this information if the Board ever needs it.

The General Assembly passed a bill which requires a community association to suspend the accrual of any monetary charges imposed by the association as a sanction for a rules violation after the member files a lawsuit challenging the validity of the charges.

The General Assembly passed bills which allow Fairfax County to regulate or prohibit people from parking watercraft, boat trailers, motor homes, and camping trailers on any public street serving a community association. Preliminary reports from the County suggest that the Board of Supervisors will take action to enact an ordinance which more strictly regulates where people may car these types of vehicles.

The General Assembly passed a bill which will affect only those communities which restrict housing to persons 55 or older. Under prior Virginia law, it was actually harder for a community to qualify as an age-restricted community than under the federal law. This bill brings Virginia law into conformance with the federal Fair Housing Act. As a result, it will be easier for communities which desire to exclude families with children to avoid discrimination laws. The Governor has signed the bill.

Please contact any of the community association attorneys if you should have any questions.