

# June 2008

## 2008 Legislative Changes Affecting Community Associations Part Two- Virginia

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In addition to House Bill 516, which we discussed in our most recent memorandum, during the 2008 legislative session the Virginia General Assembly adopted several other Bills that will affect our community association clients either directly or indirectly. It appears that much of this legislation is in response to the negative impact high risk lending has had on the real estate market, as evidenced by the increasing rate of foreclosures and deflating property values, which both tremendously impact the operations of community associations across the country. Additionally, the Governor signed into law Senate Bill 320, which limits the ability of associations to regulate the installation of solar panels and other solar energy collection devices on lots within a community association.

### Senate Bill 320

This bill prohibits a community association from forbidding an owner to install or use any solar energy collection device, including solar panels, on the owner's property. The bill allows community associations to establish reasonable restrictions concerning the size, place, and manner of placement of the solar energy collection devices. The bill allows a community association to prohibit or restrict the placement of such devices on the common areas of the community association (including condominium common elements).

The bill does not invalidate any provision in the restrictive covenants of a community association that prohibits or restricts the installation or use of any solar collection device if such provision was in effect before July 1, 2008. Additionally, the bill does not prohibit the amendment of a restrictive covenant on or after July 1, 2008, to prohibit

or restrict the installation or use of any solar collection device if such amendment is adopted by the membership of the community association in accordance with such association's governing documents.

Based on the language of the bill, Boards may not adopt rules and regulations prohibiting the installation of solar energy collection devices on lots or units in a community association. However, any existing prohibitions in the recorded covenants for a community association will remain valid, and an association will still be able to amend their covenants to establish prohibitions against the installation of solar energy collection devices on lots or units.

### **Senate Bill 797**

This bill requires high-risk mortgage lenders or servicers to take an additional step prior to issuing a notice of acceleration of a loan to a homeowner, thereby demanding payment in full of the entire balance due on the loan, as a result of default in mortgage payments. Acceleration essentially marks the beginning of the foreclosure process and this bill is aimed at giving homeowners an opportunity to request additional time to prevent the initiation of the foreclosure process.

The bill requires high-risk lenders or services to provide written notice of their intentions to send a notice to accelerate the repayment of the loan, 10 business days prior to sending the actual notice of acceleration.

If the homeowner contacts the lender and indicates the desire to avoid foreclosure after receipt of the notice, the high-risk mortgage

lender or servicer shall give the homeowner 30 calendar days' forbearance.

### **House Bill 1487**

This bill is focused on amending the Virginia Mortgage Lender and Broker Act by applying more stringent licensing criteria and imposing additional responsibilities related to ensuring that employees are properly trained and qualified to conduct business, on licensed mortgage brokers and lenders.

This bill adds new enforcement provisions, as it authorizes the SCC to impose fines upon a mortgage lender or mortgage broker that is required to be licensed under the Virginia Mortgage Lender and Broker Act for violating any other law or regulation applicable to the conduct of the lender's or broker's business.

In addition Virginia's Attorney General is now authorized to bring actions to enforce specific provisions of the federal Real Estate Settlement Procedures Act of 1974, a federal law aimed at ensuring lender and brokers provide homebuyers with more complete, accurate and understandable information about their mortgages.

Lastly, this bill also tasks Virginia's Housing Commission, a governmental body whose mission is to study and provide recommendations to the legislature regarding various housing and real estate issues affecting Virginians, to review newly enacted federal legislation pertaining to mortgage lending and brokering, and to determine if they require changes to Virginia law.