

# May 2006

## Legislative Changes in Virginia and Maryland for 2006

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### VIRGINIA LEGISLATION

The following bills will become law and take effect on July 1, 2006

#### 1. LEGISLATIVE CHANGES WHICH AFFECT CONDOMINIUM ASSOCIATIONS ONLY

Condominium Associations are now authorized to be applicants in land use matters, subject to limitations contained in the Master Deed or Declaration. Once a condominium association is no longer under the control of the declarant, the executive organ has the authority to execute land use applications. Prior to this change, it was difficult for condominium associations to file certain actions with respect to zoning and related matters.

Notice to declarant in actions for breach of warranty for construction defects. No cause of action for breach of warranty can be brought on or after January 1, 2007, unless a written statement by the condominium or its agent or attorney is sent to the declarant stating:

- the nature of the alleged defect.
- by registered or certified mail.
- to the declarant's last known address, as reflected in the records of the Real Estate Board.
- more than six months prior to the commencement of the action.
- the declarant has an opportunity to cure the alleged defect within a reasonable time.

Sending the required notice shall toll the statute of limitations for commencing a breach of warranty action for a period not to exceed six months.

#### Notice to Locality of Conversion Condominiums.

When an application for a condominium that is a conversion condominium is received by the Real Estate Board for approval, within five approval, business days, it shall issue a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, which notice shall include the name and address of the applicant and the name and address or location of the proposed condominium.

#### 2. LEGISLATION THAT IMPACTS BOTH VIRGINIA CONDOMINIUM AND PROPERTY OWNERS' ASSOCIATIONS

Garnishment forms and summonses. Requires that garnishment summonses and forms contain language declaring if the garnishment is of wages, salary, or other compensation or if the garnishment is of some other property of the judgment debtor.

Control of dangerous and vicious dogs; registry; penalty. Requires the control of dangerous dogs within a statewide mandated framework. The bill imposes criminal penalties ranging from a Class 2 misdemeanor to a Class 6 felony for violations that result in injury to a person or death to a cat or dog. The bill expands the authority to petition a court to find a dog dangerous to any law-enforcement officer and makes that petition mandatory. A Virginia

Dangerous Dog Registry is created to be maintained by the State Veterinarian; any change in the status of a dangerous dog is to be promptly submitted in writing. The bill also (i) narrows the definition of “dangerous dogs” to include dogs that inflict injury to another cat or dog requiring the animal to be euthanized while also broadening safe harbor provisions; (ii) requires that a dog that has been found to be dangerous or vicious shall be spayed or neutered; and (iii) requires liability insurance in the amount of \$100,000 to be purchased by the owner of a dangerous dog, or in lieu of the insurance policy, the owner may obtain a surety bond.

**Tow trucks; towing and recovery operators; local-option regulations; regulation by board for Towing and Recovery Operators; civil penalty.**

Allows a mechanic's lien for “towing, storage, and recovery” in addition to the present “keeping, supporting, and care”; the changes increase the present three-day limit for garage keepers to obtain vehicle data from the DMV and provides written notice to the owner of the stored vehicle to a seven-day limit; raises the so-called “junk car” threshold from the present \$5,000 to \$7,500; and increases from \$25 per day to \$50 per day the amount owed for storage if a vehicle is towed, unclaimed, and sold.

This bill imposes procedures by which towing and storage companies may seek to recover their fees and charges for towing away and storing immobilized and abandoned vehicles.

Most important, it provides that (county/city) local towing regulations can be no less restrictive than those imposed by the new Board for Towing and Recovery Operators. The measure also expands localities' ability to regulate “trespass tows” by ordinance. Trespass tows involve the towing of vehicles that appear to be trespassing upon on certain private property, i.e. the towing of vehicles parked on private property that do not display a community parking decal sticker. This legislation provides that, in the event a vehicle is towed from one locality to be stored in another, the ordinances regulating “trespass

tows” adopted by the locality from which the vehicle was towed shall apply. The law enacted provides that a locality may adopt the following regulations to govern all “trespass tows” in the locality:

- Signs must be posted on the property that inform the public that trespassing vehicles will be towed and these signs must include the non-emergency telephone number of the local law-enforcement agency or the telephone number of the towing and recovery business authorized to perform the tows.
- Localities could require photographic evidence to justify “trespass tows,”
- Notice of where towed vehicles may be reclaimed and the name and telephone number of the local consumer affairs office, and
- Obtaining the so-called “second signature” from the property owner agent prior to tows.

The maximum allowable hookup and initial towing fee for trespass tows of passenger cars would be increased from \$85 to \$125, unless local ordinance sets a different limit

- the bill establishes a new Board for Towing and Recovery Operators to license and regulate the towing and recovery industry and tow truck drivers.

**Displacement of private waste companies.** Adds requirements to the procedures localities must follow before displacing private companies providing garbage, trash, or refuse collection services to all citizens of the locality (which would also displace the private companies that provide waste removal services to community associations within that locality). The requirement to displace private waste companies in a locality include making a written finding of at least one of the following: (i) adequate

or sufficient privately-owned refuse collection and disposal services are not available; (ii) the use of privately-owned and operated services has substantially endangered the public health or created a public nuisance; (iii) privately-owned services, although available, are not able to provide needed services in a reasonable and cost-efficient manner; or (iv) displacement is necessary to provide for the development or operation of a regional system of refuse collection or disposal for two or more localities.

**Regulation of Solar Panels.** Prohibits community associations from enacting any provisions restricting solar power or the use of solar energy collection devices on units or lots that are part of the development, except to the extent provided in the applicable recorded instruments (declaration or bylaws) and rules, and authorizes community associations to prohibit or restrict the installation and use of such solar energy collection devices on the common elements or common areas; however, the bill does permit solar collection devices to be placed on limited common elements.

### 3. LEGISLATIVE CHANGES THAT AFFECT ONLY PROPERTY OWNERS' ASSOCIATIONS

**Virginia Real Estate Time-Share Act; nonjudicial foreclosure; termination of time share program; public offering statement; resale certificate.**

Provides for nonjudicial foreclosure of liens by the time-share association and sets out the process. The bill, among other things, also: (i) provides that, without permission of such member, the name, address, telephone number and other personal information about a time-share owner or member of the association are not open to inspection by association members; (ii) provides that the association is not required to produce records that are a matter of public record or are otherwise readily available from another source; (iii) allows the developer to terminate a time-share project if he is the sole owner of all of the time-shares; (iv) provides

that the offering or sale of any product that is registered with the Real Estate Board is exempt from the Wet Settlement Act; (v) allows a developer to post a letter of credit or cash with the Real Estate Board for the protection of escrowed purchase deposits; (vi) gives the developer 180 days after a sale to record the deed; and (vii) provides that if the developer has substantially complied in good faith with the Virginia Time-Share Act, a nonmaterial error or omission is not actionable and the purchaser cannot cancel his purchase contract after the expiration of the cancellation period.

#### **Other Items of Interest**

**Stormwater regulation.** Provides that income derived from stormwater control program service charges shall be dedicated special revenue and may be used only to pay or recover costs for specified purposes, including the improvement or maintenance of dams, whether publicly or privately owned, that serve to control stormwater.

#### **MARYLAND LEGISLATURE**

The following bills have passed both the House and Senate and have been signed by the Governor:

#### 1. LEGISLATION THAT IMPACTS MARYLAND CONDOMINIUMS

**Conversion Condominiums and Extended Leases.**

This law alters the method of calculating whether a resident of an apartment that is in the process of being converted to a condominium is eligible to receive an extension of their existing lease agreement. Since this law was adopted as an emergency measure, this law shall apply to any residential rental facility for which an application for registration under Section 11-127 of the Real Property Article has not been filed prior to March 15, 2006.

**Authority to Establish Condominium Regimes.**

This law amends Section 11-102 of the Maryland

Condominium Act to authorize a municipal corporation to establish a condominium regime in accordance with the Condominium Act. This law shall take effect on October 1, 2006.

## 2. LEGISLATION THAT IMPACTS BOTH MARYLAND CONDOMINIUMS AND HOMEOWNERS ASSOCIATIONS

**Underwriting or Renewal of Insurance.** A policy inquiry cannot be used by an insurance carrier to determine whether or not to underwrite or renew a policy of insurance. This law shall take effect on October 1, 2006.

**Notice of Cancellation of Insurance.** This law requires commercial insurance carriers to maintain proof of mailing of a notice of cancellation or non-renewal of an insurance policy and the bill requires the notice of cancellation to include certain disclosures to the policy holder. This law will take effect on January 1, 2007.

**Representation before CCOC.** This law allows the officers and directors of community associations to represent their association before the Common Ownership Commissions in Montgomery County and Charles County Maryland that address disputes involving community associations that do not involve non-payment of assessments and assessment related issues. This law shall take effect on October 1, 2006.

**Notice of Military Operations.** This law amends Section 14-117 of the Maryland Real Property Code to require only those owners of residential real property that is located near a military installation that conducts certain operations and testing to disclose this fact to any prospective purchasers of the property. As amended, owners of property in Alleghany, Carroll, Frederick, Garrett, Howard and Montgomery Counties are exempt from this disclosure requirement. Previously, Section 14-117 of the Real Property Code did apply to owners of property in the counties listed above and the law

required the owners of any property that **may** be impacted by such military operations to disclose these operations to prospective purchasers. The amendment to Section 14-117 will limit the scope of the required disclosures of certain military operations to the purchasers of residential property. This law will take effect on October 1, 2006.