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## 2009 Legislative Changes Affecting Virginia Common Interest Communities

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In the wake of the active 2008 legislative session that was marked by the adoption of House Bill 516, which created new initiatives like manager licensing, the Common Interest Community Board and the Common Interest Community Ombudsman, the 2009 legislative session was also a busy session. Of the nearly two dozen bills that were introduced that affect Virginia common interest communities, a handful sought to revise aspects of House Bill 516. The bills introduced in the 2009 session also included proposals reacting to the groundswell in the number of residential foreclosures. Other new legislation proposed in 2009 focused on how localities regulate parking and towing and they included the adoption of a smoking ban for certain commercial establishments and many public buildings.

Of the two dozen bills that were introduced in 2009, only eleven were ultimately adopted and enrolled as laws. Except as noted below, these new laws will take effect on July 1, 2009.

### **PARKING AND TOWING LEGISLATION**

**House Bill 1694** – Allows Fairfax and Prince William Counties, as well as the towns of Clifton, Herndon and Vienna, to enact ordinances that prohibit the parking of “super commercial” vehicles on the public streets in areas zoned residential within the applicable jurisdiction. The “super commercial vehicles” that may be prohibited by these localities are defined as vehicles that carry commercial freight in view or any truck that is more than 20 feet in length. The bill specifically exempts any vehicles used by utilities, cable service or public service companies from being considered a prohibited “super commercial vehicle” under any duly adopted ordinance.

**House Bill 1724** – This bill was aimed at addressing some inconsistencies from jurisdiction to jurisdiction on the approvals that are required to be obtained by a towing operator prior to removing a vehicle from any private premises. Prior to the enactment of this law, some jurisdictions, like Prince William County, adopted an ordinance mandating that the towing operator must have the signatures of an agent of the premises owner who is present at the time of the tow in addition to any executed towing contract prior to towing a vehicle from private property. With this new legislation, verbal agent approval of a tow is allowed (in addition to an executed contract) and this new law provides that any ordinances requiring agent signatures prior to a tow may only apply when a tow is initiated during the normal business hours of the property where the offending vehicle is parked. This legislation should simplify the process of authorizing community association towing contractors to tow improperly parked vehicles during overnight or early morning hours, which is when most parking offenses occur.

**Senate Bill 882** – Permits Stafford County to adopt an ordinance to regulate the parking of watercraft, boat trailers, motor homes, and camping trailers on public streets.

### **SMOKING IN COMMERCIAL ESTABLISHMENTS**

**House Bill 1703** - After seeing that smoking bans in DC and Maryland have been favorably received by many citizens, the General Assembly adopted a smoking ban in restaurants and certain public buildings. While many of our condominium clients have banned smoking in common areas for some time, this smoking ban will allow the increasing

number of mixed use condominiums to have smoke-free commercial and residential spaces. It is important to note that the smoking may be permitted in restaurants or public buildings that are constructed in a manner where smoking areas are structurally separated from any non-smoking areas. So, it is possible that many establishments that wish to continue to cater to a smoking clientele may alter their premises to physically separate smoking and non-smoking areas. Please note that small restaurants (with 50 seats or less) and private property are not affected by this legislation. Also the portions of this bill that affect smoking in commercial establishments will not take effect until December 1, 2009.

#### **RESALE DISCLOSURE REQUIREMENTS**

**House Bill 1785** – The General Assembly amended the disclosure requirements in the Property Owners' Association Act to except from the obligation to provide a resale disclosure any disposition of a lot at an auction when the disclosure packet was previously made available as a part of the auction package for prospective purchasers prior to the auction. The existing obligation for sellers to obtain a resale disclosure package from the community association in which the lot is located is unchanged when the disclosure packet is not made a part of the auction package prior to the commencement of the auction.

**House Bill 2289 and Senate Bill 896** – The General Assembly enacted legislation that requires entities that manage and operate property and who maintain a list of the owners of such property to provide the list of owners to the Commissioner of the Revenue when requested to do so by the Commissioner of the Revenue.

#### **ACCESS TO BOOKS AND RECORDS**

**House Bill 2305** – The General Assembly enacted legislation that requires a Property Owners Association to make available to their members the actual salary information for the six highest compensated employees of the Association who have

an annual salary that exceeds \$75,000.00. The individual salary information is not available for review and copying by members during the declarant-control period. This bill also made explicit the requirement that all books and records must be made available to a director of the Association.

#### **SOLAR POWER**

**House Bill 2417** – The General Assembly amended last year's legislation relating to solar power to clarify that community associations have the power to amend their solar power covenants to remove or relax restrictions on the use of solar power collection devices within the Association. Any such amendments must comply with the amendment provisions in the Association's governing documents.

#### **COOPERATIVES**

**House Bill 2599** – The General Assembly amended the Real Estate Cooperative Act to provide that if the time period for the exercise of special declarant rights or the creation of interests in the cooperative have expired the declaration may be amended to: (1) reinstate any of the expired rights to create additional cooperative interests and any of the expired special declarant rights; and (2) vest in any person, including the original declarant, any of the powers, rights, privileges, and authority to which a declarant is entitled under the Cooperative Act pertaining to the reinstated rights as they apply to any common element or any additional real property that the amendment seeks to add to the cooperative. Any such amendment may be approved only upon by those persons entitled to cast at least two-thirds of the votes in the association (which may not include any votes allocated to cooperative interests owned by the declarant) or any larger percentage as the declaration may specify. It is important to note that any amendment approved in accordance with this law cannot extend or renew the period of declarant control of the association or establish a new period of declarant control.

**CIC ANNUAL REPORT FEES**

**Senate Bill 1143** – This bill clarifies certain powers and duties of the Common Interest Community Board. It establishes that the CICB is a Regulatory Board as that term is defined under the Virginia Code. It also clarifies that the CICB’s jurisdiction to seek injunctive relief or to impose \$1,000 fines in actions that arise out of certain complaints is confined to being imposed against an Association’s Board rather than the individual members of the Association’s Board. The bill also changes the venue for actions brought by the CICB to the Henrico County Circuit Court and it increases the annual report fee percentage paid by common interest communities from 0.02% to 0.05% of the gross annual income from the preceding year. In addition, the bill details some other needed technical amendments intended to clarify the intended functions of the CICB.