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Virginia Legislative Changes

By: Edward J. O'Connell, III, Esquire

The General Assembly passed a number of significant bills this session which affect property owners' associations and condominium associations. The bills will take effect on July 1, 2002. The following is a brief summary of these various legislative changes.

LEGISLATIVE CHANGES WHICH AFFECT CONDOMINIUM ASSOCIATIONS ONLY

The General Assembly passed House Bill 198 which eliminates the provision that an officer may be disqualified from serving as officer if he or she does not reside in the unit for a period of six months or longer (i.e., leases the unit) if condominium instruments provide that any officer or officers of the executive organ of a unit owners' association must be unit owners.

The General Assembly also passed House Bill 303, which exempts assessments paid by unit owners for common expenses from any city or county tax. The bill prevents cities and counties from assessing business and professional licensing taxes on the assessments paid by unit owners.

LEGISLATION THAT IMPACTS BOTH CONDOMINIUM AND PROPERTY OWNERS' ASSOCIATIONS

A. Rules and Covenants Enforcement – Hearing Results

The General Assembly passed Senate Bill 519 which amends the hearing result provisions found in both Section 55-79.80:1 of the Condominium Act and Section 55-513 of the Property Owners' Association Act. Specifically, the bill provides that an association has seven (7) days to send notice of the hearing results instead of three (3) days.

B. Resale Certificates and Association Disclosure Packets

Senate Bill 519 also amends Section 55-79.97 of the Condominium Act and Sections 55-511 and 55-512 of the Property Owners' Association Act. The bill provides that community associations can deliver resale certificates and disclosure packets by electronic transmission if both the seller and the purchaser consent to the delivery of the resale certificate or disclosure packet by electronic means.

The bill also provides that the purchaser may cancel a contract within three days of delivery of the resale certificate or association disclosure packet that was delivered with the consent of the purchaser by electronic means and for which a receipt has been obtained.

The bill also amends the notice of cancellation of contract provision. As amended, the statute provides that the notice of cancellation may be delivered to either the seller or the seller's agent. Please note that the statute requires that such notice must either be hand-delivered or mailed via United States mail, return receipt requested.

The bill also amends the provisions relating to the fees charged for the preparation and delivery of resale certificates and disclosure packets. A community association may collect from the purchaser the actual costs of any mailing or delivery requested by the purchaser (e.g. overnight mail, courier)

The bill also provides that a community association may collect a rush fee for providing a resale certificate or an association disclosure packet within three business days of the actual receipt of the request. The rush fee is an additional fee over the \$100.00 fee cap imposed under the respective statutes. However, the seller must consent to the rush fee. Neither the community association nor its management agent can require cash or certified funds to pay this fee unless the seller is delinquent in any payments due the association in excess of thirty days or if a check submitted by the owner to the association was returned for insufficient funds in the last six months.

The bill also provides that a community association may obtain information from the settlement agent when a property is conveyed. Specifically, the bill provides that a settlement agent, when transmitting funds to a community association or upon the request of a community association, shall provide the following information to the community association: (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the property that is the subject of the conveyance, (iv) the date of the settlement, and (v) a brief

explanation of the application of any funds transmitted. The settlement agent may satisfy these requirements by providing a copy of the HUD-1 unless otherwise prohibited by law.

Senate Bill 523 imposes new disclosure requirements. Specifically, it requires that a community association provide a copy or summary of the most recent reserve study conducted for the community.

C. Reserves For Capital Components

Senate Bill 523 requires that both condominium associations and property owners' association conduct a study at least once every five (5) years to determine the necessity and the amount of reserves required to repair, replace, and restore "Capital Components". In addition, community associations are required to review the results of the study on an annual basis to determine if the reserves are sufficient and to develop a budget and make any adjustments to the budget that the board members believe are necessary to maintain adequate reserves for the community.

The bill does not define what constitutes a reserve study for purposes of complying with the statute. The bill does however define the term "Capital Component". Specifically, the bill states that the term "Capital Component" is defined as items, whether or not part of the common elements or common area, for which the community association has an obligation for repair, replacement or restoration and for which the board members determine funding is necessary.

Based on the foregoing, we believe that community associations must assess the Capital Components within the community and then plan a course of action to meet the requirements of the statute.

LEGISLATIVE CHANGES THAT AFFECT ONLY PROPERTY OWNERS' ASSOCIATIONS

House bill 478 further amends the association disclosure requirements found in Section 55-511 and 55-512 of the Property Owners' Association Act. The bill requires that property owners' associations include a copy of the fully completed one-page cover sheet developed by the Virginia Real Estate Board. The General Assembly had previously directed the Real Estate Board to develop the cover page, which it has done. For your reference, a copy of the cover sheet is attached to this memorandum.

LEGISLATIVE CHANGES THAT AFFECT COMMUNITY ASSOCIATIONS THAT ARE INCORPORATED AS NONSTOCK CORPORATIONS

The General Assembly passed House Bill 942, which amends the notice of meeting and voting provisions of the Virginia Nonstock Corporation Act to allow the use of electronic transmissions. Briefly, the term "electronic transmission" means "any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed" by the person or party who received the transmission.

This bill impacts community associations that are incorporated as corporations. Most property owners' associations are incorporated as nonstock corporations under the Virginia Nonstock Corporation Act. A number of condominium associations in recent years have become incorporated as Virginia Nonstock Corporations. Please note that while the bill permits the use of electronic transmissions to satisfy notice and voting requirements, all notices must still be

sent and all votes must be taken in accordance with the provisions of the community association's governing documents (i.e., bylaws and articles of incorporations).

A. Board of Director Meetings

The bill amends the notice of board of directors meeting provision to allow electronic meeting notices to be sent to a director provided that the director consents to be given notice by electronic transmission.

The notice must state the time, date and place of the meeting. A director may revoke consent by giving written notice to the corporation. In addition, a director's consent will be deemed to have been revoked if: (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and (ii) such inability becomes known to the secretary or the person responsible for giving such notice; provided, however that the inadvertent failure to treat such inability to deliver the notice as a revocation shall not invalidate any meeting or other action.

Electronic notice can take several forms. The bill states that it can be sent via facsimile transmission to a number where the director has consented to receive notice. It also states that it can be sent via electronic email when directed to an email address at which the director has consented to receive notice. In addition, it can be posted to an electronic network when a separate notice to the director of the specific posting is directed to an address at which the director has consented to receive notice. The effective date of the notice is the later of the posting or the giving of the separate notice. Lastly, notices may be given by any other

electronic forms when consented to by the director.

B. Notice of Annual & Special Meetings of the Members

The bill provides that an incorporated community association may give electronic notice of annual and special meetings to its member if the member has consented to receive such notice by electronic means. The notice must state the time, date and place of the meeting. The notice must also be given as far in advance as required under the community association's governing documents and/or Virginia law. In addition, a member's consent will be deemed to have been revoked if: (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and (ii) such inability becomes known to the secretary or the person responsible for giving such notice; provided, however that the inadvertent failure to treat such inability to deliver notice as a revocation shall not invalidate any meeting or other action.

Electronic notice of meetings can take several forms. The bill states that it can be sent via facsimile transmission to a number where the director has consented to receive notice. It can also state that it can be sent via electronic email when directed to an email address at which the director has consented to receive notice. In addition, it can be posted to an electronic network when a separate notice to the director of the specific posting is directed to an address at

which the director has consented to receive notice. The effective date of the notice is the later of the posting or the giving of the separate notice. Lastly, the bill states that notices may be given by any other electronic forms when consented to by the director.

C. Voting

The bill states that the vote of a member or a member's proxy may be submitted by electronic transmission. The bill states that, if the Association's Board of Directors authorizes the use of an electronic ballot, a written ballot requirement can be satisfied by the submission of a ballot by electronic transmission; provided that the electronic transmission shall either set forth or be submitted information from which it can be determined that the electronic transmission was authorized by either the member or the member's proxy.

Please note that many of these changes are subject to the express provisions of a community association's governing documents. For this reason, we recommend that you confer with association counsel before implementing any procedural changes to conform with the legislative changes in the memorandum.

Also, do not hesitate to contact any of the additional community association attorneys in this office if you should have any questions.