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Virginia and Maryland Legislative Changes

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Introduction to Virginia Legislative Changes

The General Assembly passed several significant bills this session which affect property owners' associations and condominium associations. Each of these bills has been signed by the Governor and will take effect on July 1, 2005. The following is a brief summary of these various legislative changes.

LEGISLATION THAT AFFECTS BOTH CONDOMINIUM AND PROPERTY OWNERS' ASSOCIATIONS

Charges for Disclosure Packages

The General Assembly passed various bills that amend Section 55-79.97 of the Condominium Act and 55-511 of the Property Owners' Act to clarify that associations are prohibited from charging for reimbursement of any costs incurred or charging any other fees related to the provision of a resale disclosure package, unless the law expressly authorizes charging such fees or the reimbursement of such costs. The change applies to both acts and operates to prohibit Associations and their

management agents from charging for any costs in providing an initial resale disclosure package other than: (1) the actual cost of providing the disclosure package, not to exceed ten cents (\$0.10) a page for copying, not to exceed one hundred dollars (\$100.00); (2) any rush fees for providing the disclosure package within three business days of the Association's receipt of the request, not to exceed twenty-five dollars (\$25); (3) the actual cost of any mailing or delivery of the resale disclosure package or any update thereof requested by the seller; (4) any actual cost incurred by the Association at the request and with the consent of the purchaser; and (5) the actual fees associated with the preparation of an update to a resale disclosure package, which fee shall reflect the actual cost incurred by the association in providing such assurances but shall not exceed ten cents (\$0.10) per page of copying costs or a total of fifty dollars (\$50.00) for all costs incurred in updating the association disclosure packet.

Real Estate Taxation on Common Areas

Senate Bill 896 amends Section 58.1-3284:1 of the Virginia Code to amend the definition of an “open or common space” to include common areas that are part of a planned residential development where the Declaration was initially recorded before January 1, 1985, and did not include automatic membership in a membership corporation or association in the declaration.

This change will prohibit a city, town or county from assessing real estate taxes against these community associations for the common area. Instead, the value of the common area will be taxed through the increased value of the residential property that has an interest in the open or common area.

Currently, condominiums and property owners associations that have mandatory membership are not taxed for their common area and common element components. However, the law did not apply to older community associations that lack mandatory membership. This amendment was adopted to close a loophole which had allowed municipalities to tax common areas in older community associations that do not have mandatory membership, but own and maintain common areas.

Notice of Meetings of Boards and Committees; Notice that Meetings are Recorded

Senate Bill 1200 amends Section 55-79.75 of the Condominium Act and

Section 55-510.1 of the Property Owners’ Association Act to require the association to provide notice of the time, date, and place to any owner requesting notice: (1) by first-class mail or e-mail in the case of meetings of the Board; or (2) by e-mail in the case of meetings of any subcommittee or other committee of the Association.

The bill also provides Boards and the committees conducting the meetings with the authority to adopt rules: (1) governing the placement and use of equipment necessary for recording a meeting; and (2) requiring the owner recording the meeting to provide notice that the meeting is being recorded.

Increased Protections for Debtors on Garnishments

The General Assembly adopted House Bill 1714, which amends Section 34-39 of the Virginia Code to increase the amount of a worker's aggregate disposable earnings protected from garnishment. Currently, the amount subject to garnishment may not exceed the lesser of: (1) twenty-five percent of the worker's disposable weekly earnings; or, (2) the amount by which his disposable earnings exceed 30 times the federal minimum hourly wage. This bill raises the federal minimum wage multiplier so that a creditor such as a community association may only garnish up to the lesser of: (1) twenty-five percent of the worker's disposable weekly earnings; or (2) the amount by which his disposable earnings exceed forty times the federal minimum hourly wage.

Clarification of the Judgment Rate of Interest

The General Assembly adopted House Bill 2010, which amends Section 6.1-330.54 of the Virginia Code to clarify that the rate of interest on a judgment is that rate in effect at the time of entry of the judgment, and is not affected by any subsequent changes to the statutory rate of interest. This amendment clarifies a previous ambiguity in the statute as to whether changes in the statutory rate of interest affect an existing judgment.

Changes to Procedures Governing the Displacement of Private Trash Companies By Localities Granting Regional Licenses

The General Assembly adopted House Bill 2168, which creates additional procedures that a city, town or county must follow before it displaces private waste disposal companies through the creation of licenses which provide waste carriers with the exclusive right to remove trash from designated regions within such city, town or county.

The bill, which was vetoed by the Governor, would have required a locality to make a written finding that at least one of the following criteria are satisfied before it may proceed with a plan to displace private waste disposal companies by granting exclusive licenses to certain waste carriers to remove trash from designated regions within such city, town or county: (i) privately-owned trash collection and disposal services are not available; (ii) the use of privately-owned and operated

trash collection and disposal services has substantially endangered the public health or created a public nuisance; (iii) privately-owned trash collection and disposal services, although available, are incapable of providing needed services in an efficient and cost-efficient manner; or (iv) displacement of existing privately-owned trash collection and disposal services is necessary to provide for the development of a regional system or refuse collection and disposal for two or more localities.

While this bill was vetoed and will not become law in 2005, we expect that legislation concerning exclusive licenses to provide waste disposal services will resurface during the 2006 legislative session.

LEGISLATIVE CHANGES WHICH AFFECT PROPERTY OWNERS' ASSOCIATIONS ONLY

Extension of Property Owners' Association Act to Communities Created under the Subdivided Land Sales Act

The General Assembly passed Senate Bill 906, which is a technical amendment that clarifies that developments established prior to the enactment of the Subdivided Land Sales Act may specifically provide for the applicability of the provisions of the Property Owners' Association Act.

LEGISLATIVE CHANGES THAT AFFECT COOPERATIVES ONLY

Mandatory Replacement Reserve Studies

House Bill 2458 requires that Virginia housing cooperatives 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.

Additionally, the Bill deleted language from Section 55-478 of the Virginia Code which had previously allowed a cooperative to include a disclosure in the Public Offering Statement that the cooperative does not maintain replacement reserves.

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

Introduction to Maryland Legislative Changes

The Maryland General Assembly passed a few significant bills this session which affect property owners’ associations and condominium associations. The bills will take effect on October 1, 2005. The following is a brief summary of these legislative changes.

LEGISLATIVE CHANGES THAT AFFECT BOTH CONDOMINIUMS AND PROPERTY OWNERS ASSOCIATIONS

Abatement of Drug Activity

The Assembly adopted a section to the real property code which grants to an association a tool to evict tenants where drug activity is causing a nuisance to the association because of the drug activity. The act also permits the court to force an owner to vacate a property and remain vacant for certain periods of time under certain circumstances. The courts can authorize the sale of the property after a judicial hearing.

LEGISLATIVE CHANGES THAT AFFECT PROPERTY OWNERS ASSOCIATIONS ONLY

Electronic fees can be passed to members. The Assembly passed changes to Real Property Code Section

11B-114-115 by permitting the pass through of fees charged by either credit card companies or direct debit banking fees for the use of either service by the members in payment of their assessments to the Association. The fees that can be passed through to the member using either service is limited to the fee charged by the financial institution to the Association. The Association must notify the member on billing or other statement that the fees

are being charged to the member for the service provided.

Also, please contact any of the community association attorneys in this office if you should have any questions regarding any of these legislative changes affecting community associations in Maryland.