



# THE SPECIAL ASSESSMENT

## 2015 VIRGINIA LEGISLATIVE UPDATE

*New and amended statutes affecting community associations are going into effect on July 1, 2015.*

It is time once again to get acquainted with this year's batch of legislation enacted by the Virginia General Assembly. During this year's General Assembly session, approximately 1,500 bills passed out of just over 3,000 bills that were introduced or carried over from last year. This article will touch upon some of the more important or interesting pieces of legislation that directly or indirectly impact community associations. These include, for instance, new or amended laws dealing with condominium association meetings and quorum, permissible association charges or fees, rental restrictions, resale disclosures, the duties of the Common Interest Community Board ("CICB"), lender foreclosure sales, corporate procedures, and workers' compensation.

Except where noted, all of these bills have been signed by the Governor and will take effect on July 1<sup>st</sup> of this year. For those interested in knowing which elected officials introduced, or sponsored, the legislation, the patrons (or chief patrons) of the bills are designated parenthetically next to the bill numbers.

**Condominium Associations – Calculating Quorum** – House Bill 2055 (Delegate Pogge) – This amendment to the Condominium Act will make it somewhat easier for some condominium associations to reach quorum for association meetings and voting. Specifically, Section 55-79.77 now states that, *except to the extent the condominium instruments provide otherwise*, the voting interest allocated to a unit or member that has been suspended pursuant to the condominium instruments "shall not be counted in the total number of voting interests to determine quorum for any meeting or vote under the condominium instruments."

As an example, if this provision is applicable to your condominium, and the condominium is comprised of 100 units (each with a voting strength of one vote per unit) and has a 20% quorum requirement, then if the voting privileges of 10 of the unit owners were suspended (pursuant to the condominium instruments) at the time of a meeting, then the quorum requirement for that meeting would be 20% of 90 units, instead of 20% of 100 units.



**Condominium Associations – Court-Ordered Election if Repeatedly No Quorum** – Senate Bill 1390 (Senator Marsden) – The Condominium Act was amended to provide a judicial remedy to help condominium associations elect directors when the association has failed to reach quorum at its annual meeting for three consecutive years. Specifically, Section 55-79.76 now provides that upon petition of a condominium association or any unit owner entitled to vote, the local circuit court is authorized to order that the association hold an annual meeting for purposes of electing directors, and the court is also authorized to set the quorum level and enter other orders necessary to convene a meeting. Two prerequisites are required before a court may order that an annual meeting be held: (1) no annual meeting has been held due to failure to obtain quorum as specified in the condominium instruments, and (2) the association has made good faith attempts to convene a duly-called annual meeting in three successive years, but failed to obtain a quorum in each attempt.

**Allowable Association Charges** – House Bill 2100 (Delegate Peace) – Both the Condominium Act and the Property Owners' Association Act ("POA Act") were amended regarding authorized association charges.

**Condominiums:** a new code section (at § 55-79.42:1) now provides that, *except as expressly authorized in the Condominium Act, the condominium instruments, or as otherwise provided by law*, condominium associations cannot impose an assessment or charge against a unit owner unless the charge is: (i) authorized by § 55-79.83 (regarding common expenses and late fees); (ii) a fee for services provided; or (iii) related to provisions set out in § 55-79.97:1 (regarding fees for resale

*Please contact us if you have questions concerning any of these legislative changes and how they may affect your Association.*

certificates). In addition, the CICB is given express authorization to assess monetary charges against an association or common interest community manager and to issue cease and desist orders for violations of this provision.

Property Owners' Associations: the same CICB sanctions referenced above are also expressly authorized for violations of § 55-509.3 of the POA Act (relating to authorized association charges).

Rental of Units/Lots – *House Bill 2100 (Delegate Peace)* – This legislation amends both the Condominium Act and the POA Act to add new code sections (§§ 55-79.87:1 and 55-509.3:1, respectively) dealing with association-imposed restrictions and charges associated with the rental of units or lots. Specifically, condominium and property owners' associations cannot condition or prohibit an owner's rental to a tenant or impose an assessment or charge *except as expressly authorized in the Condominium Act (or POA Act), in the condominium instruments (or declaration), or as otherwise provided by law.*

Moreover, *except as expressly authorized in the Condominium Act (or POA Act) or in the condominium instruments (or declaration)*, associations cannot: (1) charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 as a condition of approval of such rental during the term of any lease; (2) require an owner to use a lease prepared by the association; or (3) require a security deposit from the owner or tenant.

However, associations may require an owner to provide the association with a copy of (i) the lease with a tenant, or (ii) an association form completed by the owner or representative that discloses the names and contact information of the tenant and occupants under the lease. Also, the association may require the owner to provide the association with the tenant's acknowledgment of and consent to any rules and regulations of the association.

Resale Certificates/Disclosure Packets – *House Bill 2100 (Delegate Peace)* – The resale disclosure requirements and procedures were again amended this year in both the Condominium Act and the POA Act. Code sections that were amended include §§ 55-79.97 and 55-79.97:1 of the Condominium Act and §§ 55-509.5 and 55-509.6 of the POA Act.

If an association provides a resale certificate or disclosure packet electronically by a website link, the association (or preparer) must keep the website link active for 90 days. Further, an additional fee cannot be charged during the subsequent 12-month period, except that the preparer may charge an update fee of \$50 (for requested resale disclosure updates per the statute) after the expiration of the 90-day period from the date of issuance of the certificate/packet.

In addition, this legislation requires settlement agents to escrow sums sufficient to pay the seller's resale certificate/packet fees at settlement (for condominiums and professionally managed property owners' associations).

For condominiums only, the Condominium Act was also amended (at § 55-79.97) to state that a seller (or the seller's authorized agent) may designate that the electronic copies of the resale certificate be provided to up to five individuals named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and/or not more than one other person designated by the requestor – this is similar to language that was added last year to § 55-79.97:1.

Statement of Unit Owner and Lot Owner Rights – *Senate Bill 1008 (Senator Petersen)* – In what is essentially a summary or restatement of existing law, new code sections were added to the Condominium Act (§ 55-79.72:3) and the POA Act (§ 55-509.3:1) to provide a statement of unit owner and lot owner rights. This list of rights for members in good standing includes the following:

- Right of access to association books and records (subject to the provisions of § 55-79.74:1 of Condominium Act and § 55-510 POA Act);
- The right to cast a vote in accordance with the owner's ownership interest, except as provided otherwise in the condominium instruments or declaration, as applicable;
- The right to notice of board meetings, and to record (audio or video) and participate in board meetings (in accordance with § 55-79.75 Condominium Act and §§ 55-510(F) and 55-510.1 of the POA Act);
- The right to have (i) notice of any proceeding of the board or other tribunal (specified in the condominium instruments or declaration, as applicable) against the owner to enforce the association's rules and regulations, and (ii) an opportunity to be heard and represented by counsel at the proceeding (as provided in § 55-79.80:2 of the Condominium Act and § 55-513 of the POA Act), and (iii) due process in the conduct of that hearing;
- The right to serve on the board if duly elected and a member in good standing, except to the extent that the condominium instruments or declaration, as applicable, provide otherwise.



**Notice of Mortgage Foreclosures / “Owner” after Foreclosure** – *House Bill 2080 (Delegate Leftwich); Senate Bill 1157 (Senator Cosgrove)* – This legislation amends existing statutory provisions to clarify that when a *residential lot* within a property owners’ association (rather than just a single-family dwelling or condominium unit) is subject to a foreclosure sale under a deed of trust, the foreclosure trustee must give the condominium association and/or property owners’ association notice of the foreclosure sale (no later than 60 days after that sale). New code sections were also added to the Condominium Act (§ 55-79.84:01) and POA Act (§ 55-516.01) to refer to the above-referenced notice requirement, and to provide that the association’s board “shall exercise whatever due diligence it deems necessary with respect to the unit [or lot] subject to a sale under a deed of trust to protect the interests” of the association.

In addition, the definitions under the Condominium Act and the POA Act were amended to make it clear that the terms “unit owner” and “lot owner,” as applicable, include purchasers at a foreclosure sale even if the deed is not yet recorded in the locality’s land records.

**Common Interest Community Board (“CICB”)** – *House Bill 1632 (Delegate Bulova)* – In addition to the licensing and regulatory duties of the CICB, Va. Code § 54.1-2349 now requires the CICB to “develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners’ Associations Act.” Property owners’ associations that are considering amending their declarations may benefit from this guidance; however, considerations for amending declarations will still largely depend upon a case-by-case analysis of the particular circumstances and needs of the association, rather than a one-size-fits-all approach.

**Workers’ Compensation** – *House Bill 1285 (Delegate Scott)* – the Workers’ Compensation Act was amended to exclude from the definition of “employee” all non-compensated employees and directors of property owners’ associations (as defined in § 55-509 of the POA Act). In addition, non-compensated officers of property owners’ associations are now excluded from the definition of “executive officers”. Note that this legislation does not apply to condominium associations.

So, does this mean that property owners’ associations without compensated directors, officers or employees no longer need workers’ compensation insurance coverage? Not necessarily. The term “employee” can still be broadly interpreted under workers’ compensation law. Before cancelling (or obtaining) workers’ compensation insurance policies, it may be prudent for boards to first consult with legal counsel and the association’s insurance representatives to determine appropriate or recommended coverage.

**Corporate Procedures** – *House Bill 1878 (Delegate Kilgore)* – Among other things, this bill amends §§ 13.1-841 and 13.1-865 of the Nonstock Corporation Act, pertaining to corporate and board “action without a meeting” by written consent. For corporate action without a meeting, this legislation authorizes any person (whether or not then a member) to provide his/her written consent as a member to be effective at a future time, not more than 60 days after the consent is provided. The consent is deemed to have been given at the specified future time if: (i) the person providing the consent is in fact a member at such future time, and (ii) that person did not revoke the consent prior to such future time.

Similar authority is provided for board action without a meeting. Section 13.1-865 now authorizes any person (whether or not then a director) to provide his/her written consent as a director to be effective at a future time, not more than 60 days after the consent is provided. The consent is deemed to have been given at the specified future time if: (i) the person providing the consent is in fact a director at such future time, and (ii) that person did not duly revoke the consent prior to such future time.

The amendments to the Nonstock Corporation Act also contain relatively minor clarifications to the authority and role of inspectors of elections at membership meetings (including reliance on information provided by others assisting the inspectors). In addition, the amendments provide that those members authorized and voting by ballot submitted by electronic transmission are deemed to be present at the membership meeting.

**Family Day Homes (In-home daycare)** – *House Bill 1570 (Delegate Orrock)* [Note: as of the printing of this article, this legislation had not yet been finalized due to the Governor sending HB1570 back to the General Assembly with recommended revisions] – For reference, Va. Code § 63.2-100 defines a “family day home” to mean “a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider’s own children and any children who reside in the home, when at least one child received care for compensation.” If this bill is enacted, it would require family day homes serving five (rather than six, under current law) to 12 children to be licensed (the provider’s own children or children who reside in that home are not counted for this purpose); however, if all the children are related to the provider by blood or marriage, no license would be required. The Bill would also require local commissioners of revenue to report to the state the name, address and contact information of any family day home to

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which a business license has been issued. This Bill would also require more involved background check requirements, and would require unlicensed family day homes to provide written notice to children's parents that the day home is not regulated by the state. By adding additional licensing, reporting and notification requirements for family day homes, this legislation would hopefully provide greater protections for children being cared for in these in-home daycare facilities, as well as more opportunity for associations to learn about in-home daycare facilities being operated in their communities.

**Special Conservators of the Peace** – *Senate Bill 1195 (Senator Norment); House Bill 2206 (Delegate Campbell); House Bill 2369 (Delegate Berg)* [Note: as of the printing of this article, this legislation had not yet been finalized due to the Governor sending SB1195 and HB2206 back to the General Assembly with recommended revisions] – For those communities that utilize the services of court-appointed Special Conservators of the Peace (“SCOPs”) to provide for safety patrols, these bills would make significant changes to the certification requirements and to governmental and court involvement in licensing SCOPs. The Board of the Department of Criminal Justice Services (“DCJS”) would have to mandate training of SCOP’s at a state criminal justice training academy or a private training school certified by DCJS. Further, to be either an unarmed or armed entry-level SCOP, the candidate would now need significantly more hours of training.

In addition, the application to the court to appoint a SCOP would need to contain results of a background investigation. The court order appointing the SCOP would prohibit blue flashing lights, but upon request and for good cause shown, the court order could provide that the SCOP may use flashing lights and sirens on the SCOP’s vehicle during the performance of his/her duties. There would also be new geographical limits of a SCOP’s authority, which must be specified in the court order appointing the SCOP. The court would also retain the authority to revoke a SCOP appointment order for good cause shown, upon petition filed by the Commonwealth’s attorney, sheriff or chief of police of any locality where the SCOP is authorized to serve, or by the DCJS.

There would also be requirements for employers of SCOPs to notify the circuit court, DCJS, the Department of State Police, and the chief law-enforcement officer of the localities where the SCOP is authorized to serve within 30 days after the date the individual left employment. Finally, any existing SCOPs appointed under a court order in effect on July 1, 2015, would have 36 months to comply with the new compulsory, minimum, entry-level training standards and requirements as may be established pursuant to this legislation.

### **Your 2015 Legislative Update “To-Do” List**

Consider taking the following actions in preparation for the new or amended laws that take effect on July 1, 2015:

- √ For condominium associations, review your condominium instruments for authority to suspend voting privileges and determine whether, under the new statutory provision, it impacts the **calculation of quorum** for association meetings. See § 55-79.77(G) of the *Condominium Act*.

- √ For condominium associations that have not elected directors for at least three years due to lack of quorum, consider the possibility of seeking **court-ordered relief** to hold a meeting at a reduced quorum **for purposes of electing directors**. See § 55-79.76(C) of the *Condominium Act*.
- √ Review your association’s current fees and charges, and confirm your authority to charge them. Be mindful of the CICB’s authority to impose monetary penalties and issue cease and desist orders for violating statutory limitations on **permissible fees and charges**. See § 55-79.42:1 of the *Condominium Act* and § 55-509.3 of the *POA Act*, as applicable.
- √ Review your condominium instruments or declaration to determine whether the association’s current **rental restrictions and policies** are consistent with authority and limitations found in § 55-79.87:1 of the *Condominium Act* and § 55-509.3:1 of the *POA Act*, as applicable.
  - For instance, consider establishing a policy or procedure for requiring landlord-owners to provide copies of leases or contact information for tenants or occupants, and a tenant’s acknowledgment of, and consent to, any rules and regulations of the association.
- √ For associations providing **resale certificates/disclosure packets** electronically through a **website link**, review your procedures to ensure compliance with the new statutory requirements (e.g., keeping the link active for 90 days). See § 55-79.97(D) of the *Condominium Act* and § 55-509.5(D) of the *POA Act*, as applicable.
- √ Particularly for property owners’ associations, review your association’s insurance coverage and determine whether to obtain (or keep) **workers’ compensation insurance** coverage.
- √ For associations working with a court-appointed **Special Conservator of the Peace** (“SCOP”) for safety patrols, obtain written assurances from the SCOP regarding the SCOP’s compliance (or plan for compliance) with the new statutory requirements, such as the new training standards.

We hope this information helps prepares you for dealing with this year’s batch of new or amended laws affecting Virginia community associations. Of course, if you have any questions about this year’s legislation and how they might impact your association, please do not hesitate to contact us.



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