

## 2017 Virginia Legislative Update

by Allen Warren



Another year, another batch of legislation of interest to community associations enacted by the Virginia General Assembly and approved by the Governor. During this year's General Assembly session, approximately 1,700 bills passed the House and Senate out of just over 2,900 bills that were introduced. This article will touch upon some of the more important or interesting pieces of legislation that directly or indirectly affect community associations. These include, for instance, new or amended laws dealing with amending declarations of covenants, protecting realtors' "for sale" signs, allowing localities to require registration of short-term rentals, and granting accommodations under fair housing laws to allow "assistance animals" for those with disabilities.

All of the new legislation referenced below has been signed by the Governor and will take effect on July 1st 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 subject heading. If you appreciate, or do not appreciate, the impact of particular new legislation on your community association, we encourage you to contact your elected state delegate or senator to make known your opinion.



## Realtors, Resale Docs, and “For Sale” Signs

*[Delegates Jackson Miller (R) - House District 50; and Daniel Marshall III (R) - District 14; Senators William Stanley, Jr. (R) - District 20; and Bill DeSteph, Jr. (R) - District 8]*

This legislation amends both the Condominium Act and the Property Owners’ Association Act (“POA Act”) (§§ 55-79.97 and 55-79.97:1; 55-509.4 and 55-509.6, respectively). Specifically, both statutes were revised to provide that, *except as expressly authorized in the condominium instruments (or declaration) or as otherwise provided by law*, an association cannot mandate that realtors use an

association-provided “for sale” sign or a sign that does not comply with requirements of the Virginia Real Estate Board. However, the legislation explicitly recognizes the authority of associations to prohibit signs on the common elements (or common area) and to adopt reasonable rules related to the number, location and removal of “for sale” signs on the owner’s property or on property to which the owner has the exclusive right of possession.

In addition, this legislation confirms that the Virginia Common Interest Community Board (“CICB”) has the authority to issue cease and desist orders and impose monetary penalties against associations and common interest community managers for failing to deliver a resale certificate / disclosure packet within the required 14-day deadline.

## Amending POA’s Declaration of Covenants

*[Delegate David Bulova (D) - District 37]*

This legislation amends the POA Act (§55-515.1) to clarify that a property owners’ association’s declaration of covenants can itself provide for alternative requirements or methods for amending the declaration, rather than relying on the POA Act’s default amendment procedures. This bill was introduced in response to the 2016 Virginia Supreme Court decision in the case of *Tvardek v. Powhatan Village HOA*, a decision which seemed to ignore prior Court decisions on this subject, as well as the fact that communities with restrictive covenants have existed long before the POA Act was enacted.

## Revision to CICB’s Disclosure Packet Notice

*[Delegate Robert Orrock (R) - District 54]*

This legislation requires the Virginia Common Interest Community Board (“CICB”) to publish a new version of its “Property Owners’ Association Disclosure Packet Notice” to state what many would consider to be obvious... that when someone signs a contract to purchase a home, that contract is legally binding unless cancelled in accordance with the law. As a reminder, the CICB-published Disclosure Packet Notice is required to be included in all resale disclosure packets issued by property owners’ associations.

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## Virginia Fair Housing Law

*[Delegates Betsy B. Carr (D) - House District 69; and Kathleen Murphy (D) - House District 34; Senators George L. Barker (D) - Senate District 39; and T. Montgomery Mason (D) - Senate District 1]*

The state's fair housing statute has been amended to describe in more detail certain rights and responsibilities pertaining to requests to accommodate a person's disability. The legislation's emphasis is on waiving animal or pet restrictions for what the statute defines as "assistance animals" for those with a physical or mental disability. The term "assistance animal" is defined to include both service animals and emotional support animals. More specifically, it is an animal that alleviates one or more identified symptoms or effects of a person's disability by aiding or performing certain tasks for the disabled person (such as a "seeing eye dog") or by providing emotional support for the disabled person.



The amendments also provide that, once it is determined that a disabled person's request for an assistance animal should be granted under applicable Fair Housing standards, the housing provider (which has been deemed to include community associations) is prohibited from charging the disabled person a pet fee or deposit for the assistance animal. In addition, the amendments recognize that a housing provider does not have to allow an assistance animal on the premises if it determines that the requested animal poses a clear and present threat of substantial harm to others; however, that determination cannot be solely based on the animal's breed or size.

Finally, we note that the legislation states that if any of the new statutory provisions are determined by the U.S. Department of Housing and Urban Development to be inconsistent with federal fair housing laws, that provision of state law is unenforceable.

## Dam Safety, Flood Prevention and Protection Assistance Fund

*[Delegate Mark L. Cole (R) - House District 88]*

The state maintains a fund designed to help localities and private entities make necessary repairs and safety modifications identified in dam safety reports. This legislation authorizes the the Virginia Department of Conservation and Recreation to make grants (rather than just loans) to private entities that own dams in need of repair or modification.

## Short-Term Leasing: Regulation by Localities

*[Senator Thomas Norment, Jr. (R) - Senate District 3]*

This legislation provides additional authority for governmental regulation of persons who rent their dwelling (or rooms within a dwelling) for short-term lodging or sleeping purposes (whether overnight, weekly or otherwise for fewer than 30 consecutive days at a time). Rather than addressing whether short-term rentals should even be allowed in residential communities, however, this legislation appears to be more focused on generating revenue for state and local governments.

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First, the Alcoholic Beverage Control (ABC) Act was amended to provide that ABC licensing requirements will apply to persons who serve or provide alcoholic beverages to a guest occupying their residence under a short-term rental arrangement, regardless of whether the permanent resident of the dwelling is present during the short-term rental. Issuing additional ABC licenses will, of course, generate additional revenues for the state.

Second, county and cities are being granted the authority to adopt local ordinances requiring the annual registration of persons who offer property for short-term rental, and to pay a fee as part of that registration process. In addition, the locality's ordinance can provide for a penalty of up to \$500 per violation against short-term rental operators who fail to register as required by the ordinance. The ordinance may also provide that a short-term rental operator can be prohibited from registering and offering the property for short-term rental if there are repeated violations of the registry ordinance or other applicable state or local laws and ordinances.

Of particular interest, the legislation explicitly states that it is not to be construed to supersede or limit private contracts or agreements related to the use of property, including those found in condominium instruments and in property owners' association's declarations of covenants. We note, for instance, that many condominium instruments and declarations of covenants contain specific prohibitions against short-term leasing or using the dwelling for transient or hotel-like purposes.

### Oyster Beds: Notice of Application for Leasing/Assignment

*[Delegate Jason Miyares (R) - House District 82; and Senator Bill DeSteph, Jr. (R) - Senate District 8]*

This legislation amends existing notice requirements when Virginia's Marine Resources Commission receives an application for the assignment (or leasing) of oyster planting grounds. The revised notice requirements should better ensure that owners within 200 feet of the selected oyster planting grounds receive actual notice of the application and an opportunity to submit written comments to the Commission. The new notice requirements also state that if notice of the application is mailed (by certified or registered mail) to the board of directors of a community association, then that notice is deemed sufficient notice to all homeowners within that association.



### 2017 Legislative Update "To-Do" List

Consider taking the following actions related to the new or amended laws that take effect on July 1, 2017:

- For condominiums and property owners' associations, review your current **rules regarding real estate "for sale signs"** – do not mandate that realtors use an association-provided "for sale" sign (or a sign that does not include the licensed realtor's firm's name and telephone number) unless those requirements are expressly authorized in the condominium instruments (or declaration of covenants).
- For condominiums and property owners' associations, review current resale disclosure packet / resale certificate processes to ensure they are being timely delivered as required by statute.

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- For property owners' associations attempting to amend their declaration of covenants, be sure to review, confirm and follow applicable **amendment procedures**.
  - For property owners' associations, be on the lookout for the **CICB's revised Disclosure Packet Notice** and then update your resale disclosure packet.
  - As always, be mindful of your obligations to comply with state and federal **fair housing laws**, including proper handling of requests for accommodation pertaining to "assistance animals."
  - **If your association owns a dam** that needs repairs or safety modifications based on its most recent dam safety report, consider whether to apply for a grant or loan from the state to help fund those repairs or modifications.
  - **Be on the lookout for public hearings on short-term leasing ordinances** being considered by your local government.

We hope this information helps prepare 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 it might affect your association, please do not hesitate to contact us.

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Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.  
3201 Jermantown Road, Suite 600  
Fairfax, Virginia 22030  
(703) 352-1900  
[www.chadwickwashington.com](http://www.chadwickwashington.com)