



The Special Assessment June 2022 Edition

2022 Virginia Legislative Update

By **Tiago D. Bezerra**



For the first time since 2014, the Virginia General Assembly convened with the legislature featuring divided party control between the Republican-controlled House of Delegates and the Democrat-controlled Senate. The previous two sessions featured Democratic control of both houses of the General Assembly, and the five legislative sessions before that were under Republican control. With the executive branch of the Virginia government held firmly by Republican officials for the first time since 2013, the 2022 Regular Session of the Virginia General Assembly convened on January 12, 2022 in unfamiliar territory for a long, sixty-day session.

Aside from *politics as usual*, the results of the Session could be described as being fairly “moderate” as partisan legislation was mostly defeated either in the House or Senate. When the General Assembly adjourned *sine die* on March 12, 2022, just over half of the 2,141 bills and 1,002 resolutions introduced in the House and Senate passed both houses of the General Assembly. Of the 840 bills that passed the General Assembly, Governor Glenn Youngkin vetoed 26 of them, the most vetoes in a Virginia governor’s first year since former Governor Jim Gilmore vetoed 37 bills in 1998.

We are glad to report that, of the bills that will become law resulting from the 2022 Regular Session of the General Assembly, few will substantively impact Virginia common interest communities. The 15-member CAI Virginia Legislative Action Committee (“Virginia LAC”), which is chaired by Chadwick Washington’s own Jerry Wright, closely monitored forty bills that were identified as having a potential impact on planned communities. Of those forty bills, only three bills substantively impacting community associations were adopted and one was continued to the 2023 Regular Session.

Below are summaries of the three approved bills referenced above that directly impact community associations (and will go into effect July 1, 2022 this year unless otherwise noted below), along with comments on the continued bill and other legislation of which we believe common interest communities should be mindful.

Structural Integrity/Surfside, Florida. Senate Bill 740 was introduced by Senator Scott A. Surovell (Democrat/District 36) in response to the Champlain Towers South Condominium building collapse in Surfside, Florida on June 24, 2021. As adopted, SB 740 requires the Virginia Department of Professional and Occupational Regulation (“DPOR”) to create a

Work Group to study “the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities.”

The DPOR Work Group will be composed of representatives from various stakeholder groups in the subject-matter, including local governments, community association leaders and members, community managers, association attorneys, auditors, and engineers. The Work Group will provide a report and legislative recommendations to the General Assembly no later than April 1, 2023, meaning that legislation on the subject matter is not anticipated until the 2024 Regular Session of the General Assembly.

Unrelated to SB 740 but pertinent to the Surfside Tragedy and reserves, condominium associations should be aware of new “temporary” disclosure requirements imposed by government-backed mortgage guarantors, Fannie Mae and Freddie Mac. These new *Lender Questionnaire* addenda ask associations to answer various questions concerning structural integrity and the status of reserves funds. Depending on the answers provided, prospective purchasers may be unable to secure a mortgage, which would impact the marketability of units throughout the condominium. On the other hand, answering questions incorrectly may result in significant legal repercussions to the association. Condominium executive boards should be aware of these *Lender Questionnaires* and consult with legal counsel and management to determine the best way to proceed.

For those interested in the learning more about the Surfside Tragedy and efforts of the greater community association industry to address concerns about structural integrity, the Community Associations Institute (“CAI”) has a wealth of resources available online at <http://www.caionline.org>. Among the resources is a report published by CAI that offers comments and recommendations for reserve studies and funding, maintenance, and structural integrity.

Authorized Owner Representatives. Almost every year, the Virginia Realtors Association (“Virginia Realtors”) proposes legislation that directly impacts community association administration and governance. This year, the subject matter of the Virginia Realtors’ legislation was to ensure that community associations recognize real estate brokers and sales agents designated by owners to act on the owners’ behalf. Companion bills introduced in the Senate (Senate Bill 197) by Senator T. Montgomery Mason (Democrat/District 1) and the House (House Bill 470) by Delegate David L. Bulova (Democrat/District 37) were adopted to amend certain provisions of the Virginia Property Owners’ Association Act (“POA Act”) and the Virginia Condominium Act (“Condo Act”).

Generally speaking, associations are encouraged to communicate only through and with its owner members. However, the amendments to the POA Act and Condo Act clarify the circumstances under which an association **must** recognize and communicate with an owner’s authorized representative. Under the amendments, associations must recognize any Virginia licensed real estate broker, salesperson, or agent who is designated as an owner’s representative. To evidence such representation, the association must be provided with written authorization signed by the owners that includes the designated representative’s name, contact information, and license number. With such information in hand, an association must recognize and communicate with the designated representative as if that representative is the owner. However, this does not impact any statutory or governing document requirements for owners to validly appoint proxies for quorum and voting purposes.

Ombudsman Procedures/Recordings. Senate Bill 693 was introduced by Senator J. Chapman Petersen (Democrat/District 34) in response to constituent concerns raised about the association complaint process required by Section 54.1-2354.4 of the Virginia Code. As a reminder, the association complaint procedure is limited in application only to complaints related to violations by an association of laws or regulations governing common interest communities, such as failing to provide access to association books and records in accordance with the POA Act or Condo Act.

If a person makes a complaint against an association or its board of directors and the board renders a final determination that leaves the complainant dissatisfied, the complainant has a right to file a Notice of Final Adverse Decision with the Common Interest Community Ombudsman (“Ombudsman”) to review the matter. Under current procedures, the Ombudsman limits her consideration only to written, documentary evidence (i.e., written materials)

related to the complaint. As originally drafted, however, SB 693 would have required the Ombudsman to also consider audio and video recordings.

The bill passed the Senate unanimously, but a substitute bill was offered in a House subcommittee (and later was adopted by the Senate and approved by the Governor) that transitioned the bill into a study after concerns were raised about the feasibility about allowing audio and video recordings to be part of the Ombudsman review process. So, there are no changes with respect to the Ombudsman process at this time. However, in accordance with the substitute House substitute version of the bill, the Common Interest Community Board will review whether audio and video recordings should be considered by the Ombudsman and report its findings and recommendations to the General Assembly on or before November 1, 2022.

To learn more about the association complaint procedure, check out the informational videos published on the Ombudsman's website – <http://www.dpor.virginia.gov/CIC-Ombudsman>.

Accounting Practices. Introduced by Senator Jeremy S. McPike (Democrat/District 29), Senate Bill 217 proposed to change *one* word in Section 55.1-1815 of the POA Act that would have had a significant impact on the accounting practices of property owners' associations. Most associations use a *modified accrual* method of accounting, but the bill likely would have forced associations to change to the *accrual* accounting method espoused by *generally accepted accounting principles* (aka GAAP). To allow more time for concerns raised to be reviewed, so significant unintended impacts on community associations could be avoided, Senator McPike agreed to continue consideration of the bill to the 2023 Regular Session of the General Assembly.

Electric Vehicle Charging Stations. House Bill 450 adds a new statute in Title 46.2 of the Code of Virginia – which addresses motor vehicles in the Commonwealth – relating to use of electric vehicle (“EV”) charging stations. Introduced by Delegate Elizabeth B. Bennett-Parker (Democrat/District 45), HB 450 makes it a traffic infraction for vehicles to be parked in spaces marked for EV charging that are not in the process of using the EV charging station. The traffic infraction contemplates a civil penalty not to exceed \$25.00, so long as the parking space reserved for EV charging is clearly marked with a sign that includes the language “PENALTY, UP TO \$25.” This legislation becomes effective July 1, 2022.

Community associations that have EV charging stations **cannot** impose or enforce the new traffic infraction established in HB 450 – traffic infractions are enforced only by law enforcement – and it is unclear whether localities may adopt ordinances to impose the restriction on privately-owned parking areas, such as those that are part of community associations. For associations with EV charging stations available for resident use, attention should be paid to whether your locality implements an ordinance consistent with HB 450 and, if so, whether law enforcement can enforce the traffic law in your community. Boards of directors should also consider whether rules are in place to ensure EV charging stations are available for resident use consistent with the law and association authority to adopt such rules.

Court of Appeals Expanded Jurisdiction. Last year, the General Assembly enacted legislation that expanded the jurisdiction of the Virginia Court of Appeals. Prior to the legislation, which took effect January 1, 2022, the jurisdiction of the Court of Appeals was limited to hearing appeals only from criminal and family cases as well as administrative decisions from governmental agencies (e.g., Virginia Workers' Compensation Commission). Any party to a civil case who wished to have a circuit court decision reviewed was limited to petitioning the Virginia Supreme Court for the right to appeal the case. This *petition* requirement allowed the Virginia Supreme Court to decide which cases it believed sufficiently critical enough to consider, meaning that many trial court decisions were never given appellate review.

Now, however, under the expanded jurisdiction of the Court of Appeals, any party aggrieved by a decision of a Virginia circuit court in a civil case may appeal the decision *by right* to the Virginia Court of Appeals. In other words, any case in circuit court is guaranteed a second look if at least one party is willing to go through the appeal process, which consists of drafting briefs and arguing at a hearing before the court – *an appeal is not a second trial*.

We anticipate this expanded access to appeals will have a significant impact on the development of community association law in the Commonwealth. The general dearth of binding court opinions addressing community association

law (as compared to other practice areas) makes it difficult to assure governing boards whether certain actions would be upheld in court. With appeals now guaranteed to all litigants in Virginia, we expect the number of court opinions impacting our communities to increase consequentially.

We hope this article helps you prepare for the changes, albeit few, to laws affecting Virginia common interest communities. If you have any questions about this year's legislation and other legislative and judicial trends that may impact your association, please do not hesitate to contact us.

2022 Legislative Update "To-Do" List

Consider taking the following actions related to the laws addressed in this report:

- ✓ *For condominiums and property owners' associations*, ensure your reserve study is up to date – that one has been completed within the last five calendar years as required by state law – and that the association is budgeting and contributing sufficient to its reserve fund.
- ✓ *For condominiums*, consult with legal counsel and management to develop a plan for responding to the Lender Questionnaire addenda implemented by Fannie Mae and Freddie Mac in response to the Surfside Tragedy.

For condominium and property owners' associations, consider whether you need a new or revised unit or lot rental policy outlines the documentation necessary if a landlord owner wants the association to recognize a designated representative.

Take Action Today – SAFER in Condos Act of 2022

On April 18, 2022 H.R. 7532, the Securing Access to Finance Exterior Repairs (SAFER) in Condos Act was introduced in Congress by Representatives Charlie Crist and Debbie Wasserman Schultz in response to the partial collapse of Champlain Towers South in Surfside, Fla., on June 24, 2021, in which 98 people died. This legislation, if adopted, would allow condominium homeowners to finance critical building repairs with loans backed by the Federal Housing Administration (FHA) and offers many other benefits to condominium associations and homeowners. To learn more about the proposed legislation, and to tell your congressperson if you support the SAFER in Condos Act, you can visit: <https://www.votervoice.net/CAI/Campaigns/94112/Respond>



Chadwick Washington Zoom Webinar Series



Chadwick, Washington, Moriarty, Elmore & Bunn, P.C., is pleased to host and invites you to attend one or more of its educational Webinar Series for 2022 highlighting topics relating to community association law and governance. Each Webinar is one hour, with two topics presented by CWMEB attorneys followed by Q&A Sessions in separate Zoom breakout rooms staffed by CWMEB attorneys. The waiting room for the Webinars will open about 15 minutes before the sessions begin at 7:00 p.m., with the Q&A Breakout Rooms opening at approximately 7:40 p.m.

Topics this season include Amending Governing Documents; EV Charging Stations and Solar Panels; Understanding the Fiduciary Duty; Association Insurance Coverages; Emotional Support Animals; Drafting Rules and Regulations; Key Provisions in Vendor Contracts; a Virginia legislative update (June sessions); and many more.

The firm's next educational Zoom Webinar will be held on **Monday, June 13, 2022, at 7:00 p.m.** and will include the **2022 Virginia Legislative Update** as well as a presentation concerning **Association Insurance Issues**. If you are interested in registering you may do so directly [here](#).

We look forward to seeing all of our clients and guests during our 2022 Webinar Series and encourage you to register early for those topics and presentations you don't want to miss. The schedule listing the dates, times and topics for the 2022 Webinar Series is posted [here](#). Clients, managers and guests can also register for the Webinar(s) of choice directly [here](#). Additionally, more information can be found on the Seminar Series page of our website at www.chadwickwashington.com.

Firm Happenings



Brendan Bunn co-presented a seminar for the Washington Metro Chapter of the Community Association Institute ("WMCCAI") titled "When Boards Make Mistakes: Minimizing the Fallout." The seminar was held on May 25 in WMCCAI's conference center with both live and virtual attendance.



Lesley Rigney and **Dan Blom** were recently promoted to Senior Associate Attorneys at Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.

Check out through the link below the article "Self-Help, Procedure, and the Unexpected!" written by **Dan Blom** and published in the May 2022 edition of *Quorum*.

[Read full article](#)



Through the link below access an article written by **Olga Tseliak** and recently published in the June 2022 edition of *Quorum* which provides a guide for associations to manage unsafe driving within their communities.

[Read full article](#)



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

Photo credits (top to bottom):

1. [Istockphoto.com/sshepard](https://www.istockphoto.com/sshepard)
2. [Istockphoto.com/ dkfielding](https://www.istockphoto.com/dkfielding)
3. [Istockphoto.com/turk_stock_photographer](https://www.istockphoto.com/turk_stock_photographer)

Legal Disclaimer: The information in this newsletter is not intended to be legal advice. Legal advice must be tailored to your specific facts and circumstances and your association's governing documents. This newsletter is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the individualized advice of your legal counsel.

If you do not wish to receive further e-mail messages, you may [unsubscribe](#).