



The Special Assessment May 2023 Edition

2023 Virginia Legislative Update Adjournment and Passage

By Tiago D. Bezerra



On February 25, 2023, the Virginia General Assembly adjourned *sine die* to conclude its forty-five day “short session.” All in all, the General Assembly considered approximately 3,000 bills and resolutions over that month-and-a-half period with only a little more than half passing both the House of Delegates and the Senate. Those bills requiring

approval from Governor Glenn Youngkin were sent to his desk for action by March 27, 2023. In the end, of the 819 bills that were passed by the General Assembly only three were vetoed by the Governor – a significant amount fewer than the 26 he vetoed last year.

Throughout the legislative session, the 15-member CAI Virginia Legislative Action Committee (“Virginia LAC”), of which Chadwick Washington’s own Jerry Wright is a member, closely monitored forty-three bills that were identified as having a potential impact on planned communities. Of those bills, only three bills directly impacting community associations were adopted and will become law this year, along with a couple of other noteworthy bills. Below are summaries of the three approved bills that will impact community associations, along with comments on other legislation of which common interest communities should be aware – each of the bills discussed below will go into effect July 1, 2023.

Resale Documents. *House Bill 2235* and its companion *Senate Bill 1222* are the bills expected to have the most immediate impact on Virginia common interest communities. The bills, drafted in coordination with the Virginia Realtors Association, create a new Chapter 23.1 in Title 55 of the Code of Virginia titled the *Resale Disclosure Act*, Va. Code §55.1-2307 *et seq.* This Act will govern resale disclosure requirements for **all** community associations moving forward, including property owners’ associations and condominium unit owners’ associations. Existing resale provisions in the Virginia Property Owners’ Association Act (“POA Act”), Sections §§ 55.1-1808 through -1814, and the Condominium Act (“Condo Act”), Sections §§ 55.1-1990 through -1995, are repealed and no longer effective as of July 1st.

Starting July 1, 2023, all documents prepared by community associations in connection with the sale of a lot or unit will be referred to as *resale certificates*. While the preparation and form of resale certificates will be substantially similar to past resale documents communities have been accustomed to preparing, there are several procedural and substantive changes that will need to be carefully reviewed and implemented. A few of the highlights include the following:

- There are thirty items or statements that must be included in all resale certificates, including some new statements not previously addressed. A few of the more significant changes include:
 - Identifying the name, address, and phone numbers of the preparer of the resale certificate and any managing agent of the Association;
 - For condominiums, a complete copy of the declaration and all amendments thereto must be provided with resale certificates along with other governing documents (just like for property owners' associations);
 - The current operating budget of the association, rather than just a summary, must be provided;
 - Copies of approved board meeting minutes from the last six months and copies of approved *or* draft meeting minutes from the most recent membership meeting must be provided;
 - Specific statements must be made concerning: (i) parking and vehicle restrictions in the recorded covenants or rules and regulations, (ii) restrictions on the operation of home-based businesses, and (iii) restrictions on an owner's ability to rent their home.
- Fees for resale certificates may be required to be paid upon request of the certificate rather than being due at settlement.
- Associations must publish and make available a schedule of all applicable fees assessed as part of the resale certificate preparation and delivery process.

Associations have until July 1st to implement these changes, so steps to update current practices and procedures should be taken as soon as possible. Associations should not rely on third-party resale certificate providers to ensure compliance without oversight – it will be critical to review the first few sets of certificates in order to avoid noncompliance with the new disclosure laws.

Management Contracts. *House Bill 1519* has a simple but direct impact on contractual relationships between community associations and their management agents. For management contracts with *automatic renewal* provisions, new sections are added in the POA Act (§55.1-1837) and the Condo Act (§55.1-1940.1) that expressly allow associations to terminate the management contract *without cause* on no less than sixty days' written notice. In other words, community associations may have the right to terminate their management contract without cause even if the management contract is silent in that regard. Even so, it is strongly recommended that boards of directors consult with legal counsel before attempting to exercise this statutory termination authority.

CICB Compliance. Amendments to state law concerning the Common Interest Community Board ("CICB") and Common Interest Community Ombudsman ("Ombudsman") were implemented by *Senate Bill 1042* and its companion *House Bill 1627*. In addition to requiring that the Ombudsman maintain additional records with respect to referral of complaints to the CICB, these bills take aim at community associations that commit the same violation of common interest community law or CICB regulations within a 365-day period. This means that associations which, pursuant to the state-required association complaint procedure, are found by the Ombudsman to have violated the same law or regulation in a 365-day period will be referred to the CICB for review of the violation and potential sanctions, including possible fines up to \$1,000 and legal action.

Previously, community associations who violated the same law or regulation on multiple occasions were not automatically referred to the CICB, so associations may not have had sufficient incentive to bring their conduct into compliance. Now, with associations being automatically referred to the CICB for the same violation in a year's time, associations must ensure corrective action is taken the first time the Ombudsman determines a violation exists.

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

Miscellaneous Bills. No other bills were adopted that will amend the POA Act or Condo Act. However, there are a couple of other bills that may impact some communities, including the following:

Assistance Animals. Common interest communities are subject to state and federal fair housing laws which, among other obligations, require community associations to make reasonable accommodations to disabled residents. Among the accommodation requests some associations often face is the request for an assistance animal – either a trained service animal or an emotional support animal.

In order for an association to evaluate a request for an assistance animal, residents may sometimes be required to provide documentation verifying their disability and disability-related need for the assistance animal. *House Bill 1725* makes it a violation of Virginia consumer protection laws for a person providing the documentation in support of a resident's assistance animal request (e.g., mental health service provider, doctor, etc.) to do so fraudulently. In other words, persons providing fraudulent documentation in support of a resident's request may be subject to significant civil liability.

It is unclear how effective this legislation will be in eliminating fraudulent assistance animal requests, particularly because enforcement will likely be left to the Virginia Attorney General's Office – claims by others (i.e., associations) require a monetary loss of some variety and it may be difficult for an association to prove a negative fiscal impact stemming from fraudulent documentation supporting an assistance animal accommodation request. Nevertheless, it is hoped that this legislation will have at least some deterrent effect.

Localities & Trails. For those community associations that have granted to localities an easement to maintain public trails through the association's property, *Senate Bill 807* and its House companion, *House Bill 2041*, clarify that the association that owns the property on which the trails exist is immune from liability for injury or property damage occurring on the trail unless caused by the association's gross negligence or willful misconduct. Previously, this liability protection only applied if the association had leased or licensed land for public trails.

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

2023 Legislative Update "To-Do" List

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

- ✓ *For condominium unit and property owners' associations*, review the Resale Disclosure Act and ensure resale certificates prepared on or after July 1, 2023, satisfy new requirements (including content and payment of fees).
- ✓ *For condominium unit and property owners' associations*, prepare, adopt and publish a schedule of fees that will be charged as permitted under the Resale Disclosure Act.
- ✓ *For condominium unit and property owners' associations*, keep in mind the new 60-day right to terminate management contracts without cause when negotiating new management contracts that have automatic renewal provisions.

Senate Bill 740 Structural Integrity Reserve Study

The work group established pursuant to Senate Bill 740 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 recently completed its study and below is a link to the published Department of Professional and Occupational Regulation (“DPOR”) Study of 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.



According to Demetrios Melis, Director of DPOR, the report contains “a breadth of conceptual policy recommendations developed by members of the legislatively prescribed work group representing a broad spectrum of expertise in their respective fields. These recommendations should serve as an impetus to inform discussions surrounding whether public policy is necessary for the protection of the health, safety, and welfare of Virginia’s citizens residing in common interest communities, specifically as it pertains to the structural integrity of shared capital components.”

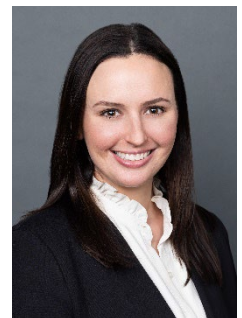
Click [HERE](#) to view the full report.

CWMEB Welcomes Two New Attorneys



Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. is excited to announce that **Robin Cole** has joined the firm and will be working with the litigation team in the firm’s Fairfax office. Robin received her undergraduate degree from the University of Florida and her law degree from Georgetown University. She has been practicing insurance defense since 2006 and was staff counsel for Liberty Mutual Insurance prior to joining Chadwick Washington. She has tried dozens of jury trials in Virginia and the District of Columbia and her experience will be invaluable to the litigation team. Robin will be handling both insurance defense cases as well as the firm’s community association litigation.

The firm is also excited to announce the hiring of **Melissa Payne** as an associate in the firm’s Fairfax office. Melissa received her undergraduate degree from Florida State University and her law degree from Wake Forest University School of Law. Melissa will work in the community association practice group and assist the firm’s Virginia clients in general counseling, contract review, collections and similar matters.



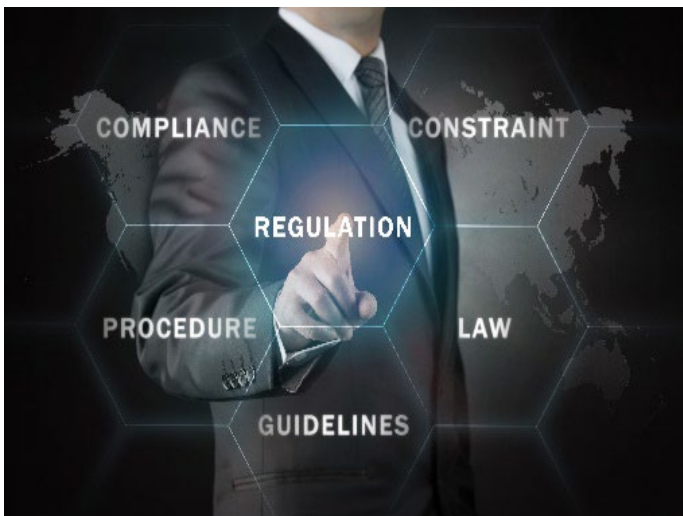
CWMEB is Now Offering Electronic Notarization for VA Liens

Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. is offering our Virginia community association clients (in most counties and cities) a new optional service to make notarizing assessment liens more convenient and timelier. Specifically, when a client’s president needs to sign a condominium or homeowners’ association assessment lien, we now have

electronic notaries to remotely notarize the assessment lien during normal business hours. This eliminates the need to get the lien notarized in person at a bank or other location and to mail it back to us.

- **Step 1: is your association in a county or city where we offer this e-notary service?** Click [HERE](#) - if your county or city is shown with a checkmark next to it, the answer is “yes”! If the Answer is “yes,” go to the next step.
- **Step 2:** for a better understanding of the **general requirements and process for e-notarization**, click [HERE](#) for a video tutorial (choose “signer’s experience”) and [HERE](#) for a checklist (both from notarize.com). Note that instead of using notarize.com’s “on-demand” notaries, we use our own in-house e-notaries.
- **Step 3: contact our firm to start e-notarizing liens.** If you wish to start having all your association liens e-notarized, email us at: enotary@chadwickwashington.com, confirming your preference and the email address we are to use to notify the president when a lien is ready to be e-notarized. Alternatively, on a case-by-case basis, when your association receives an assessment lien to sign, send an email to the CWMEB paralegal assigned to your account, asking to e-notarize a lien.
- **Step 4: e-notarize the lien.** When a lien is ready to be e-notarized, you will be contacted by one of our e-notaries to schedule an appointment for the online e-notarization.
 - The first time a person (the signer) wants to sign a lien in front of our e-notary, he/she will need to create an account with notarize.com.
 - The signer needs to have: 1) social security number, 2) gov’t-issued photo ID, 3) computer or smart phone with audio/video capability, and 4) a strong internet connection (*see the checklist referenced in Step 2 above*).
 - We will send the signer an email with a link to start the e-notary online appointment. We will already have the lien uploaded and ready.
 - Once the signer is logged in and the appointment starts, it should only take about 10 minutes to sign the lien and complete the e-notarization.
 - As required by applicable law, the e-notary records the e-notarization session.

We are excited to offer this service to our Virginia association clients. If you have any questions, please send us email at enotary@chadwickwashington.com.



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 2023 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 Tips for Handling Difficult Board Members; Best Practices for Holding “Due Process” hearings; Avoiding Pitfalls When Planning a Membership Meeting; Tips for Reviewing Architectural Applications; What to Look for When Hiring a Management Company; How to Deal with Vendor Breaches and Other Contract Problems; Basics of

Bankruptcy and Assessment Collection; Defending Associations from Lawsuits and Other Claims; a Virginia legislative update (June sessions); and many more.

The firm's next educational Zoom Webinar will be held on **Monday, May 22, 2023, at 7:00 p.m.** and will include presentations regarding **Hiring a Management Company – What to Look For** and **The How-To Guide for Getting an Injunction**. 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 2023 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 2023 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

Andrew Elmore, Brendan Bunn, Sara Ross, Jerry Wright, Michael Sottolano and Lesley Rigney were recently featured speakers at the 2023 Central Virginia Chapter of Community Associations Institute annual Community Associations Day Tradeshow & Expo held at the Omni Richmond Hotel.



Jerry Wright has been elected by the Virginia Legislative Action Committee to Chair its new Legislative Policy Subcommittee and has also been designated to serve on the new Local Land Use and Community Living Work Group for the Virginia Housing Commission. At the request of the Virginia General Assembly, this Work Group will study various housing topics, including Common Interest Community issues.



Brendan Bunn and Jerry Wright have been designated to serve on the Common Interest Community subcommittee of the Real Estate Section of the Virginia State Bar. This subcommittee is comprised of attorneys around the Commonwealth to address issues and promote education pertaining to Common Interest Communities.



Sara Ross was quoted in the article *Through the Looking Glass* published in the May/June 2023 edition of Community Association Institute's [Common Ground](#) magazine.

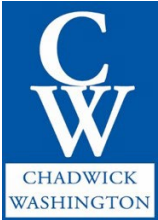


Tiago Bezerra was featured in the article *Next Generation* published in the May/June 2023 edition of Community Association Institute's [Common Ground](#) magazine.



Check out through the link below the article *Handling Requests for Emotional Support Animals and Service Animals* written by **Dan Blom** and published in the May 2023 edition of *Quorum*.

[Read full article](#)



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