



THE SPECIAL ASSESSMENT

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2021 Virginia Legislative Update

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Each year, before and during the Virginia General Assembly's legislative session, community association volunteer leaders must keep a watchful eye on legislative bills submitted for consideration by our state senators and delegates. Often, these bills are submitted to address some perceived injustice that may have occurred in a particular association, providing a legislative "fix" for something that either did not need to be fixed or that should not be addressed as a "one-size-fits-all" statutory mandate. This year, we are pleased to report on several changes to the Virginia Condominium Act and the Property Owners' Association Act that should serve community associations well, improving their ability to efficiently and effectively operate and protect the overall interests of the membership.



This article will address several of the enacted pieces of 2021 legislation that directly impact community associations. These include, for instance, legislation pertaining to board authority to authorize virtual membership, board and committee meetings (expanding upon last year's temporary legislation), board authority to ban smoking, fair housing parking accommodations, another expansion of the "protected classes" under state fair housing laws, and limiting the ability to foreclose on a judgment debtor's primary residence. The legislation described 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 next to the subject heading. If you appreciate (or do not appreciate) the impact that a particular piece of legislation may have on your community association, we encourage you to contact your elected state delegate or senator to make your point-of-view known.

Holding 100% “Virtual” Meetings – Plus E-Voting (Condo Act and POA Act) – House Bill 1816 [chief patron David Bulova (D) – District 37; chief co-patron Kelly Convors-Fowler (D) - District 21]; Senate Bill 1183 [Siobhan Dunnivant (R) – District 12]



As you will likely recall, in April 2020 in response to the COVID-19 health emergency, the General Assembly *temporarily* authorized community association governing boards to meet 100% “virtually” *during the period of a state of emergency declared by the Governor*. Expanding upon that limited temporary authorization, both the Virginia Condominium Act (the “Condo Act”) and the Virginia Property Owners’ Association Act (the “POA Act”) will allow meetings of property owners’ associations and condominium unit owners’ associations, as well as their boards of directors and committees, to be held entirely or partially by electronic means *if authorized pursuant to board-adopted e-meeting guidelines that comply with the statutory provisions*.

Both statutes were also amended to provide broader authority to vote by proxy or absentee ballot, as well as to vote through electronic means. First, the amended statutes provide that, *unless expressly prohibited by the condominium instruments or a property owner’s association’s governing documents*, votes at a membership meeting may be cast in person, by proxy or by absentee ballot. Then the statutes provide that voting can take place by electronic means *if authorized by board-adopted e-voting guidelines*. However, if the vote, consent or approval is required to be obtained by secret ballot, the electronic means must be able to protect the identity of the voter. Also of importance, both statutes provide that owners who are voting by absentee ballot or proxy are deemed to be present at the meeting for all purposes.

What does it mean to hold a meeting by “electronic means”? Both statutes define this to include meetings conducted via teleconference, videoconference, internet exchange, or other electronic methods.

Will e-meetings be authorized after the COVID-19 public health emergency ends in Virginia? Yes, this new e-meeting authorization will apply even when there is no declared state of emergency. As such, this new legislation also removes the longstanding requirement that at least two directors be physically present during a board meeting.

What are the statutory prerequisites for holding an e-meeting? Under both statutes, it is within the discretion of the board of directors (or other executive body) to authorize membership, board and committee meetings to be held entirely or partially by electronic means. If e-meetings are desired by the board, the board will need to authorize e-meetings through board-adopted guidelines that address how the chosen electronic means will be used for e-meetings. Both statutes require those guidelines to ensure, at a minimum, that:

- (1) Persons accessing an e-meeting are authorized to do so; and
- (2) Persons entitled to participate in the e-meeting have an opportunity to do so.

Note, though, that if a person does not have the capability or desire to conduct business using electronic means, both statutes require associations to make available, at its cost, a reasonable alternative (not using electronic means) for that person to conduct business with the association.

Sending Association Meeting Notices by Email (Condo Act) – House Bill 1816 and Senate Bill 1183 [same bills as virtual meeting legislation referenced above]

Similar to existing provisions of the POA Act, the Condo Act was amended to provide that when an emailed association meeting notice is returned as undeliverable, the association must then send the meeting notice to that unit owner by U.S. mail. In addition, assuming a unit owner opts into receiving email meeting notices, the association has the statutory right to email the meeting notice regardless of whether the condominium instruments or rules and regulations specifically authorize emailing meeting notices.

Authority to Ban Smoking (Condo Act and POA Act) – House Bill 1842 [Mark Keam (D) – District 35]

Both the Condo Act and the POA Act were amended to give boards of directors broad authority to restrict smoking, including banning smoking. The POA Act provides that, *except to the extent that the declaration provides otherwise*, the board may establish reasonable rules that restrict smoking in the development, including rules that prohibit smoking in the common areas. In addition, in POAs that include attached private dwelling units (such as townhomes), the board-adopted rules may prohibit smoking within such dwelling units. The Condo Act provides that, *except to the extent that the condominium instruments provide otherwise*, the board-adopted rules may restrict smoking in the condominium, including completely prohibiting smoking in the common elements and within units. This new legislation means, for instance, that a condominium’s board of directors can adopt a rule that not only bans smoking on the common elements, but also inside the units themselves without the need for an owner-approved amendment to the condominium instruments.



Enforcing Rules and Regulations (POA Act and Condo Act) – House Bill 1842 [Mark Keam (D) – District 35]

The POA Act was amended to make it mandatory, rather than discretionary, for the court to award court costs and reasonable attorneys’ fees to the prevailing party in a lawsuit to enforce board-adopted rules and regulations. Similar to existing provisions in the POA Act, the Condo Act was amended to expressly address board authority to adopt and enforce published rules and regulations pertaining to the use of the common elements and other areas of responsibility assigned to the association by the condominium instruments. In addition, the Condo Act now provides unit owners with the authority to repeal or amend any board-adopted rule or regulation at a duly-called special meeting of the association.

Expanded Protections Against Discrimination (Fair Housing, Employment and Public Accommodations) – House Bill 2161 [chief patron Kathy Tran (D) - District 42; chief co-patrons Kelly Convirs-Fowler (D) – District 21, Dan Helmer (D) – District 40, and Kathleen Murphy (D) – District 34]; Senate Bill 1410 [chief patron John Bell (D) – District 13]



Last year, the Virginia Fair Housing Law was amended to expand the scope of persons protected from housing-related discrimination, adding sexual orientation, gender identity, status as a veteran, and source of income (joining the other categories of race, color, religion, national origin, sex, elderliness, familial status). This year, “status as a veteran” was expanded to “military status,” which is defined to mean: (i) a member of the U.S. uniformed forces or the reserves, (ii) a veteran, or (iii) a dependent of the service member. The expansion from veteran status to military status was also made to statutes pertaining to unlawful discrimination in the workplace and in public accommodations (such as restaurants).

Fair Housing Accommodations: Accessible Parking – House Bill 1971 [chief patron Betsy Carr (D) – District 69]

In an apparent effort to clarify existing law, the Virginia Fair Housing Law was amended to expressly state that “when a person receives a request for accessible parking to accommodate a disability, the person receiving the request shall treat such request as a request for reasonable accommodation as provided by this chapter.”

Judicial Foreclosures to Enforce Judgment Liens – House Bill 2175 [chief patron Luke Torian (D) – District 52; chief co-patrons Jeffrey Bourne (D) – District 71, Dan Helmer (D) – District 40, and Marcus Simon (D) – District 53]; Senate Bill 1327 [Jennifer McClellan (D) – District 9]

As a measure to help protect debtors from losing their homes (regardless of the impact on creditors), the Virginia Code was amended to prohibit judgment creditors from seeking a judicial foreclosure against a judgment debtor’s primary residence if the amount of the judgment is \$25,000 or less (not including interest and costs).

2021 Legislative Update “To-Do” List



Consider taking the following actions related to this year’s Virginia legislation:

✓ *For condominium and property owners’ associations*, boards should consider whether holding **partial or 100% electronic (virtual) meetings** of the board, association and committees are desirable and, if so, develop and adopt guidelines governing how e-meetings will be held in accordance with applicable law and the governing documents.

✓ *For condominiums and property owners’ associations (with attached dwellings)*, boards should consider whether there is a need to exercise its new

statutory rulemaking authority to **restrict or outright ban smoking**, including inside condominium units and attached dwellings.

✓ *For condominium and property owners’ associations*, be sure that all directors, officers, managers, committee members and employees are **aware of** anti-discrimination laws and related policies, including the **expanded list of protected** classes under the **Virginia Fair Housing Law**.

✓ *For condominium and property owners’ associations with common element/common area parking spaces*, boards and managers should be mindful of the need to promptly and carefully consider **disability-related requests to provide accessible parking spaces** as requests for a “reasonable accommodation,” which may mean, for instance, creating a reserved accessible parking space, posting signage and painting the curb or pavement to designate its status.

We hope this information helps prepare you for dealing with this year’s legislation most directly 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.

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.*



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