

June 2018

Community Associations Newsletter

VIRGINIA LEGISLATIVE UPDATE

By: Todd A. Sinkins, Esq. and Kelly C. Zook, Esq.

During its 2018 legislative session, the General Assembly approved a number of Bills that the Governor signed into law creating changes to the Property Owners' Association Act ("POAA"), the Condominium Act and the Virginia Non-Stock Corporation Act. The legislation addressed in this newsletter will take effect on July 1, 2018, unless otherwise noted below.

Redacting Associations' Book and Records:

Senate Bill 722 amends Section 55-79.74:1 of the Condominium Act and Sections 55-509.3:2 and 55-510 of the POAA to impose a duty upon the association to redact the books and records and to require owners to reimburse the association for any reasonable costs incurred by the association.

Specially, the Bill provides that the books and records of an association can only be withheld from examination and copying in their entirety to the extent that an exclusion from disclosure applies to the entire contents of such books and records. If only a portion of the books and records may be excluded from disclosure, the association must produce all portions of the books and records which are not excluded provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

We recommend that all associations update their access to records policy resolutions to expressly set forth redacting costs and the anticipated costs of a legal review. The association will need to update the policy before imposing redacting costs or costs of legal review against an owner making a records request.

Common Interest Community Board Resale Certificate and Disclosure Packet Form:

The Common Interest Community Board was previously required to disseminate a one-page form to accompany association disclosure packets. House Bill 923 now requires the Common

Interest Community Board to develop and disseminate a form, which may be more than one-page, to accompany resale certificates and association disclosure packets. The form must now include the following:

- i. the obligation on the part of an owner to pay regular annual or special assessments to the association;
- ii. the penalty for failure or refusal to pay such assessment;
- iii. the purposes for which such assessments, if any, may be used;
- iv. the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living;
- v. limitations on an owner's ability to rent his lot or unit;
- vi. limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community;
- vii. limitations on an owner's ability to maintain an animal as a pet within the lot or unit or in common areas or common elements;
- viii. architectural guidelines applicable to an owner's lot or unit;
- ix. limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit;
- x. the period or length of declarant control; and
- xi. that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law.

The form is also required to state that the purchaser remains responsible for his own examination of the resale certificate or disclosure packet, that the purchaser must carefully review the entire resale certificate or disclosure packet, and that the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies with the form.

House Bill 923 also amends Section 55-79.97 of the Condominium Act and Section 55-509.5 of the POAA to require an association to include a copy of the fully completed form developed by the Common Interest Community Board in the resale certificate or disclosure packet, as applicable.

Fees for Disclosure Packets:

House Bill 1031 amends Sections 55-509.4, 55-509.6 and 55-509.7 of the POAA to restrict when associations can collect fees authorized by Sections 55-509.6 and 55-509.7 of the POAA.

For both professionally managed associations and associations not professionally managed, the association cannot collect fees authorized by the POAA unless the Association is (i) registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report with the Common Interest Community Board, (iii) is current in paying the annual payment to the Common Interest Community Board pursuant to §55-516.1 and any assessment made by the Common Interest Community Board pursuant to §55-530.1. In addition, a professionally managed association cannot collect fees authorized by Section 55-509.6 of the POAA unless the association provides the disclosure packet electronically if so requested by the requester.

House Bill 1031 also permits associations not professionally managed to charge reasonable fees related to the resale disclosure packet. House Bill amends Section 55-509.7 of the POAA to allow a reasonable fee to be charged, at option of seller or seller's authorized agent and with the consent of the association, for (i) expediting the inspection, preparation and delivery of the disclosure packet if completed within 5 business days of the request, not to exceed \$50; (ii) an additional hard copy of the disclosure packet not to exceed \$25 per hard copy; and (iii) third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet not to exceed an amount equal to the actual costs paid.

House Bill 1031 also permits associations not professionally managed to charge and collect fees for inspection of the property, for the preparation and issuance of an association disclosure packet, and for such other services as set out in §55-509.6, provided that the association provides the disclosure packet electronically if so required by the requester and otherwise complies with §55-509.6 of the POAA.

Expansion of application of the POAA:

House Bill 1533 expands the application of the POAA by amending Section 55-508. Section 55-508 of the POAA now applies to any development established prior to the enactment of the former Subdivided Land Sales Act (§55-336 et seq.) (i) located in a county with an urban county executive form of government, (ii) containing 500 or more lots, (iii) each lot of which is located within the boundaries of a watershed improvement district established pursuant to Article 3 (§10.1-614 et seq.) of Chapter 6 of Title 10.1, and (iv) each lot of which is subject to substantially similar deed restrictions, which shall be considered a declaration under this chapter.

Virtual Meetings under the Non-Stock Corporation Act:

House Bill 1205 amends the Virginia Non-Stock Corporation Act to permit virtual meetings. Specially, the Bill provides that, unless the articles of incorporation or bylaws require the meeting of members to be held at a place, the board of directors may determine that any meeting of members shall not be held at any place and shall instead be held solely by means of remote communication. Before holding a virtual meeting under the Virginia Non-Stock Corporation Act, an association will need to review its articles of incorporation and bylaws to ensure that the meeting of members is not required to be held at a place.

Locality Regulation of Solar Devices:

Senate Bill 429 adds Section 15.2-2288.7 to the Code of Virginia, which permits the local regulation of solar facilities. Senate Bill 429 provides that an owner may install a solar facility on the roof of a dwelling or other building for electrical or thermal needs of that dwelling or building. The solar facility must comply with the height and setback requirement in the zoning district where the property is located, as well as the local historic or architectural preservation districts. These provisions also apply to ground-mounted solar energy generation facilities, unless prohibited by ordinance.

Senate Bill 429 confirms that Section 15.2-2288.7 to the Code of Virginia shall not supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including the provisions of condominium instruments of a condominium created pursuant to the Condominium Act or any declaration of a property owners' association created pursuant to the POAA.

Senate Bill 429 provides that localities, by ordinance, may provide by-right authority for the installation of solar facilities in any zoning classification.

Please note that the provisions of 15.2-2288.77 applicable to ground-mounted solar energy generation facilities shall become effective on **January 1, 2019**. Senate Bill 429 provides that unless a locality regulates ground-mounted solar facilities in the zoning ordinance as a permitted principal or accessory use, or expressly as a solar facility, a ground-mounted solar energy generation facility existing as of January 1, 2018 shall be deemed a legally existing nonconforming use under §15.2-2307 of the Code of Virginia and shall not be subject to removal.

If you have any questions regarding the 2018 legislative changes, please do not hesitate to contact one of our Rees Broome community association attorneys.