REES BROOME, PC
ATTORNEYS AT LAW

June 2016

Community Associations Newsletter

VIRGINIA LEGISLATIVE UPDATE

By: Todd A. Sinkins, Esq. and Kathleen N. Machado, Esq.

During its 2016 legislative session, the General Assembly approved a number of Bills that the Governor signed into law creating changes to the Property Owners' Association Act ("POA") and the Condominium Act. The legislation addressed in this newsletter will take effect on July 1, 2016.

Leasing Restrictions:

House Bill 684 amends both the Condominium Act and the POA. The new law provides that, unless expressly provided in the applicable Act or the association's recorded governing documents, an association may not: 1) condition or prohibit the rental of a unit/lot to a tenant by an owner; 2) make an assessment or impose a charge (annual or monthly rental fee or other fee) except as provided in 55-79.42:1 of the Condominium Act or 55-509.3 of the POA; 3) charge a rental fee, application fee, or other processing fee of any kind in excess of $50.00 as a condition of approval of such a rental during the term of any lease; 4) require the owner to use a lease prepared by the association; 5) charge a security deposit to the owner or the tenant of the owner; or 6) have the authority to evict a tenant of any owner or to require any owner to execute a power of attorney authorizing the association to so evict.

The Bill was amended to eliminate the statutory requirement that owners provide copies of the leases on their units or lots to the Association. Nevertheless, to the extent the association governing documents or duly-adopted rules permit, the association can still require a copy of the lease to be provided to the association. Additionally, the Acts still permit associations to require owners to provide the associations a form which contains the identifying names and contact information for any tenant, vehicle information related to said tenants, and a tenant acknowledgment of, and consent to, any rules and regulations of the association.

House Bill 684 also included changes to the Acts to expressly authorize an owner to designate a person licensed by the Virginia Real Estate Board as the owner's authorized representative with respect to any lease and requires an association to recognize such representation without a formal power of attorney (except in voting matters).

Condemnations for Property Owners' Associations:

Senate Bill 237 amends Section 516.2 of the POA and pertains to condemnation proceedings for homeowners' associations only. The new law makes an important change to the manner in which just compensation for common area is calculated by adding the following verbiage:

"*The common area that is affected shall be valued on the basis of the common area's highest and best use as though it were free from restriction to sole use as a common area."*

This change is expected to allow for greater financial compensation to homeowners' associations that are subject to takings of common area via condemnation proceedings. Prior to this legislation, associations typically received relatively low value in exchange for the common area property being condemned. Nominal value had been attributed to such property because appraisals took into account the covenants/proffers and other common area designations of the property restricting its use to common area and thus did not permit it to be appraised at its highest and best use. Our reading of the amended language is that the value of the property will now be based on how the property as a whole is zoned, and not based on the restricted use of the property as a common area parcel. For instance, if the common area parcel is within an association zoned for residential use, the value of the parcel will be determined by an appraisal calculating the value of the common area as if it were to be used as a residential lot. We are optimistic that this change to the law will now provide associations with greater leverage to demand and receive more significant compensation awards for a taking of common area property or when contesting a valuation of a parcel in court.

Proffer Conditions:

Senate Bill 549 restricts the ability of localities to place conditions on an approval of a development application that requires rezoning, which are not related to the needs of the development itself. Specifically, the Bill provides that no locality shall:

- request or accept any unreasonable proffer in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use; or
- deny any rezoning application, including an application for amendment to an existing proffer, for a new residential development or new residential use where such denial is

based on an applicant's failure or refusal to submit, or remain subject to, an unreasonable proffer.

The law further defines a proffer condition as unreasonable unless it relates to an impact that is specifically attributable to a proposed new residential development or other new residential use applied for in the application.

With respect to offsite proffers, they are deemed unreasonable unless the proffer relates to an impact to an off-site public facility such that:

- the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment; and
- each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements.

This means that in order for a locality to require an off-site road improvement, park, school or other similar off-site public improvement, the locality must be able to establish that the existing facilities lack the necessary capacity to handle the increased usage created by the new development.

The Bill further provides a presumption against a locality once an applicant who was denied approval establishes by a preponderance of the evidence that the applicant was refused or failed to submit, or remain subject to, an unreasonable proffer that it has proven was suggested, requested, or required, formally or informally, by the locality.

The Bill does not apply to any new residential development or residential use occurring in the following areas:

- an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § **33.2-100**, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof;
- an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or

- an approved service district created pursuant to § **15.2-2400** that encompasses an existing or planned Metrorail station.

In practice, this means that the new law does not apply to certain areas of high density residential development, such as in Tysons Corner, portions of Reston, and areas located near an existing or planned Metrorail station.

Resale Documents/Processes:

House Bill 684 also included a number of typographical and technical revisions to the POA and the Condominium Act. Additionally, HB 684 also incorporated more specific definitions regarding delivery and receipt of disclosure documents. Specifically, definitions of the terms, "delivery", "purchaser's authorized agent," "seller's authorized agent," "receives", "received", or "receiving" are now included in both Acts.

The Bill extends to 60 days, from the date of delivery of the resale certificate, the time period when the all resale fees may be assessed against the unit owner and made his or her personal obligation, assuming the fees are not collected at settlement.

Further, the Bill amended both Acts to clarify that if a Lot/Unit is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last resale certificate or disclosure packet.

Lastly, the Bill amends Section 55-509.5 of the POA to largely mirror the provision of the Condominium Act relating to providing disclosure documents in electronic form and the related charges.

If you have any questions regarding the 2016 legislative changes, please do not hesitate to contact one of our Rees Broome community association attorneys.