

June 2019

Community Associations Newsletter

2019 Legislative Updates

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During its 2019 legislative session, the General Assembly approved a number of bills that create changes to the Property Owners' Association Act ("POAA"), the Condominium Act and the Code of Virginia. The legislation addressed in this newsletter will take effect on July 1, 2019, unless otherwise noted below. Also, please note that Chapter 55 of the Virginia Code will be reorganized, with new Section numbers imposed, effective October 1, 2019. Accordingly, the Section numbers referenced herein will be changing. We do not yet know the new Section numbers but will provide an update once we are made aware of the changed numbering.

Home-Based Businesses:

House Bill 1853 and Senate Bill 1537 amend Section 55-513.2 of the POAA to provide that if a development is located in a locality that classifies home-based child care services as an accessory or ancillary residential use under the locality's zoning ordinance, the provision of home-based child care services in a personal residence shall be deemed a residential use unless expressly (i) prohibited or restricted by the declaration or (ii) restricted by the association's bylaws or rules as provided in Section 55-513.2(A). Therefore, if the association's declaration does not explicitly prohibit or restrict home-based child care services and the association wishes to do so, the association will need to amend the declaration to prohibit daycares, or adopt a policy resolution restricting home-based child care services.

Delivery of Condominium Resale Certificates and Association Disclosure Packets:

House Bill 2385 and Senate Bill 1580 amend Section 55-79.97 of the Condominium Act and Section 55-509.4 of the POAA to provide that a purchaser of a unit subject to the Condominium Act or a lot subject to the POAA may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the condominium resale certificate or association disclosure packet, is notified that the condominium resale certificate or association disclosure packet will not be available, or receives a condominium

resale certificate or association disclosure packet that does not contain the information required to be included in the condominium resale certificate or association disclosure packet; (ii) within three days after receiving the condominium resale certificate or association disclosure packet if the condominium resale certificate or association disclosure packet, notice that the condominium resale certificate or association disclosure packet will not be available, or a condominium resale certificate or association disclosure packet that does not contain the information required to be included in the condominium resale certificate or association disclosure packet is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after the postmark date if the condominium resale certificate or association disclosure packet, notice that the condominium resale certificate or association disclosure packet will not be available, or a condominium resale certificate or association disclosure packet that does not contain the information required to be included in the condominium resale certificate or association disclosure packet is sent to the purchaser by United States mail. This change is important in that it establishes the right of a prospective purchaser to rescind their sales contract if they receive an incomplete resale disclosure packet, which then could subject the association to liability in the event a contract is terminated.

Issuance of Compliance Orders by the Common Interest Community Board:

House Bill 1962 amends Section 54.1-2352 of the Code of Virginia and Section 55-79.100 of the Condominium Act. The Common Interest Community Board previously was authorized to issue temporary and permanent cease and desist orders requiring the board of directors of the association to cease and desist from taking certain actions. House Bill 1962 now authorizes the Common Interest Community Board to issue orders requiring boards of directors to take affirmative action to correct certain conditions in order to come into compliance with relevant statutory requirements.

Common Interest Community Board Association Fees:

House Bill 2081 amends Section 54.1-2349 of the Code of Virginia, Section 55-79.93:1 of the Condominium Act and Section 55-516.1 of the POAA to eliminate the annual assessments previously levied by the Common Interest Community Board. In place of the annual assessments, House Bill 2018 provides that upon application for license and each renewal thereof, the applicant shall pay a fee established by the Common Interest Community Board, which shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to Section 55-529. Section 55-79.93:1 of the Condominium Act and Section 55-504.1 of the POAA now provide that the annual report shall be accompanied by a fee in the amount established by the Common Interest Community Board.

House Bill 2081 further amends Section 55-509.6(N) and Section 509.7(J) of the POAA to state that no professionally managed association and association not professionally managed may

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collect fees authorized by Section 55-509.6 and Section 509.7 unless the association is current in paying any assessment made by the Common Interest Community Board.

House Bill 2081 adds Section 55-529(B) to the Code of Virginia. This new subsection provides that following the close of any biennium, when the Common Interest Community Management Information Fund shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Board, the Board shall revise the fees levied by it for placement into the Funds so that the fees are sufficient but not excessive to cover expenses. Section 55-529(B) further provides that a fee established pursuant to Section 55-79.93:1 or 55-516.1 shall not exceed \$25.00 unless such fee is based on the number of units or lots in the association.

This Bill makes it imperative that the annual report and assessment payment is made annually to the CIC Board to ensure compliance with the Code and to allow the association to collect its fees for resale disclosure packets.

Dissemination of Annual Budgets and Reserve for Capital Components:

House Bill 2030 and Senate Bill 1538 amend Section 55-79.83:1 of the Condominium Act and Section 55-514.1 of the POAA to require, except to the extent provided in the condominium instruments or declaration, the board of directors to make available to the owners either (i) the annual budget of the association or (ii) a summary of such annual budget prior to the commencement of the fiscal year. In addition, House Bill 2030 and Senate Bill 1538 requires that the five-year reserve study include a statement that sets forth the amount of reserves recommended in the reserve study and the amount of current cash available for replacements reserves. House Bill and Senate Bill 1538 further amend Section 55-514.1 of the POAA to require that the Community Interest Community Board shall develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study.

Therefore, associations will need to do the following:

1. Provide the members either with a summary of the budget or a copy of the budget prior to the commencement of the fiscal year
2. Ensure that the reserve study includes a statement that sets forth the amount of reserves recommended in the reserve study and the amount of current cash available for replacements reserves.

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Meetings of Property Owners Associations and Notice by E-Mail:

House Bill 2694 amends Section 55-510 of the POAA to allow for members to elect to receive notice of association meetings by electronic mail. Pursuant to Section 55-510 of the POAA, notice of association meetings shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot. In the alternative, notice of association meetings may be (i) hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the member, or (ii) sent to the member by electronic mail, provided that the member has elected to receive such notice by electronic mail and, in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail.

This change in the law clarifies an ambiguity in the Code and allows members to elect to receive notice of membership meetings electronically. However, you can only send the meeting notices electronically if the member affirmatively elects to receive notices electronically.

Common Interest Communities; Required Disclosure of Stormwater Management Facilities:

The Common Interest Community Board was previously required to disseminate a form to accompany resale certificates and association disclosure packets setting forth specific items that may or may not be applicable to a particular common interest community. House Bill 2019 now requires the form to include information on the purposes for which assessments, if any, may be used, including for the construction or maintenance of stormwater management facilities.

Stormwater Management Fund:

House Bill 1614 and Senate Bill 1248 add Section 15.2-2114.01 to the Code of Virginia to allow any locality to create a local Stormwater Management Fund. The Stormwater Management Fund shall consist of appropriated local moneys for the purpose of granting funds to an owner of private property or a common interest community for stormwater management and erosion prevention on previously developed lands. Any grants from the Stormwater Management Fund shall only be used for the construction, improvement or repair of a stormwater management facility or for erosion and sediment control.

C-PACE Loans for Stormwater Management Facilities:

Senate Bill 1400 amends Section 15.2-958.3 of the Code of Virginia to authorize any locality, by ordinance, to authorize contracts to provide loans for the initial acquisition and installation of clean energy or stormwater management improvements with free and willing property owners of both existing properties and new construction.

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C-PACE Loans for Shoreline Resiliency Improvements:

Senate Bill 1559 also amends Section 15.2-958.3 of the Code of Virginia to authorize any locality, by ordinance, to authorize contracts to provide loans for the initial acquisition and installation of clean energy or resiliency improvements with free and willing property owners of both existing properties and new construction. Section 15.2-958.3 provides that resiliency improvements may include mitigation of flooding or the impacts of flooding or stormwater management improvements with a preference for natural or nature-based features and living shorelines.

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