

# June 2020

## *Community Associations Newsletter*

### **2020 Legislative Updates**

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**D**uring its 2020 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, 2020, unless otherwise noted below.

#### Electric Vehicle Charging Stations:

Senate Bill 630 adds Section 55.1-1823.1 to the POAA and Section 55.1-192.1 to the Condominium Act to permit electric vehicle charging stations except to the extent that the recorded governing documents or condominium instruments provides otherwise. Senate Bill 630 provides that no association shall prohibit any owner from installing an electric vehicle charging station for the owner's personal use on the property owned by the lot owner or within the boundaries of a unit or limited common element parking space appurtenant to the unit owned by the unit owner.

Senate Bill 630 also provides that any owner installing an electric vehicle charging station shall indemnify and hold the association harmless from all liability, including reasonable attorney fees incurred by the association, resulting from a claim, arising out of the installation, maintenance, operation or use of such electric charging station. Senate Bill 630 further provides that the association may require the owner to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation or use of the electric vehicle charging stations and require the association to be included as a named insured on such policy.

Section 55.1-1823.1 of the POAA provides that an association can prohibit or restrict the installation of electric vehicle charging stations on the common area and may establish reasonable restrictions as to the number, size, place and manner of placement or installation of electric vehicles charging stations on the common area.

Section 55.1-1962.1(C) of the Condominium Act authorizes the association to require as a condition of approving installation of an electric vehicle charging station that the owner:

- (1) provide detailed plans and drawings prepared by a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
  - (2) comply with applicable building codes or recognized safety standards;
  - (3) comply with reasonable architectural standards adopted by the association that govern the dimensions, placement or exterior appearance of the charging station;
  - (4) pay the costs of installation, maintenance, operation and use of the charging station;
  - (5) indemnify and hold the association harmless from any claim made by a contractor or supplier pursuant to Title 43;
  - (6) pay the cost of removal of the electric vehicle charging station and restoration of the area if the unit owner decides there is no longer a need for the charging station;
  - (7) separately meter, at the unit owner's sole expense, the utilities associated with such electric vehicle charging station and pay the cost of electricity and other associated utilities;
  - (8) engage the services of a licensed electrician or engineer familiar with the installation and core requirements of an electric vehicle charging station to install the electric vehicle charging station;
  - (9) obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, and use of the charging station and provide a certificate of insurance naming the association as an additional insured on the unit owner's insurance policy within 14 days after receiving the association's approval to install such charging station; and
  - (10) reimburse the unit owners' association for any increase in common expenses specially attributable to the electric vehicle charging station installation, including the actual cost of any increased insurance premium amount, within 14 days' notice from the association.
- Section 55.1-1962.1(D) further provides that the conditions imposed on unit owners for installation of an electric vehicle charging station shall run with title of the unit to which the limited common element parking space is appurtenant.

#### Resale Disclosure Packet Statement on Political Signs:

House Bill 720 amends Sections 55.1-1809 and 55.1-1814 of the POAA to provide that an association disclosure packet shall contain a statement setting forth any restrictions as to the size, place, duration or manner of placement or display of political signs by a lot owner on his lot.

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### Termination of Condominium:

House Bill 1548 amends Section 55.1-1937 of the Condominium Act, which governs the process for terminating a condominium, to provide that any unit owner acquiring a unit after the approval of a termination agreement but prior to recordation of the termination agreement shall be deemed to have consented to the termination agreement. The association is required to include a copy of the termination agreement with the resale certificate until the termination agreement is recorded.

House Bill 1548 further provides that upon the termination of a condominium, the respective interests of the unit owners shall be as set forth in the termination agreement unless the method of determining such respective interests is other than the relative fair market values. If the method of determining the respective interests of the unit owners is other than the fair market values, the association shall provide each unit owner with a notice stating the result of that method for the unit owner's unit. Within 30 days after transmission of that notice, any unit owner disputing the interest to be distributed to his unit may require that the association obtain an independent appraisal of the condominium units. If the value of an objecting unit owner's unit set forth in an independent appraisal is at least 10 percent more than the amount stated in the association's notice, the association shall adjust the respective interest of the unit owners so that each unit owner's share is based on the fair market value for each unit. If the fair market value is less than 10 percent more than the amount that the objecting unit owners would have received using the agreed-upon method, then the agreed-upon method shall be implemented and the objecting unit owners shall receive the distribution, less their pro-rata share of the cost of their appraisal.

House Bill 1548 further provides that, unless the termination agreement provides otherwise, each unit owner shall satisfy and cause the release of any mortgage, deed of trust, leave or other lien or encumbrance on his unit at the time required by the termination agreement.

House Bill 1548 also amends Section 55.1-1941 of the Condominium Act to provide that any amendment adopted without the required consent of a mortgagee shall be voidable only by an institutional lender than was entitled to notice and an opportunity to consent. Section 55.1-1941(B) provides that an action to void an amendment shall be subject to the one-year statute of limitation set forth in Section 55.1-1934(C) beginning on the date of recordation of the amendment.

### Delivery of Condominium Resale Certificates and Association Disclosure Packets:

House Bill 176 and Senate Bill 672 amend Section 55.1-1990 of the Condominium Act and Section 55.1-1808 of the POAA to provide that a ratified real estate contract shall include any addendum to such contract.

In addition, House Bill 176 and Senate Bill 672 amend Section 55.1-1990 of the Condominium Act and Section 55.1-1808 of the POAA to provide that a purchaser of a unit subject to the

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Condominium Act or a lot subject to the POAA may cancel the contract: (i) within three days, or up to seven days if extended by the ratified real estate contract, 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, or up to seven days if extended by the ratified real estate contract, after receiving the condominium resale certificate or association disclosure packet if 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, or up to ten days if extended by the ratified real estate contract 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 authorizes a seller and prospective purchaser to include in the ratified sales contract an extension of the time period for a prospective purchaser to rescind their sales contract if they receive an incomplete resale disclosure packet.

#### Technical Amendments to the POAA, Condominium Act and Code of Virginia:

House Bill 1340 made technical amendments to Sections 55.1-1805, 55.1-1808, 55.1-1810 and 55.1-1815 of the POAA and Sections 55.1-1904, 55.1-1906, 55.1-1911, 55.1-1919, 55.1-1937, 55.1-1940, 55.1-1945 and 55.1-1974 of the Condominium Act to make corrections and implement clarifying changes relating to the revision and recordation of Title 55 enacted during the 2019 Legislative Session.

House Bill 1340 also amended Section 54.1-2345 of the Code of Virginia to provide that common interest community shall mean real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses, provided that for the purpose of this chapter only, a common interest community does not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act or any additional land that is a part of such registration.

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Virginia Fair Housing Laws:

House Bill 1049 and Senate Bill 868 amended Sections 36-96.1, 36-96.1:1, 36-96.2, 36-96.3, 36-96.4 and 36-96.6 of the Code of Virginia which is referred to as the Virginia Fair Housing Law. The Virginia Fair Housing Law provides that it is now unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of sexual orientation, gender identity or status as a veteran.

Restrictions on Solar Power:

House Bill 414 and Senate Bill 504 amends Section 67-701 to the Code of Virginia regarding community association restrictions regarding solar power. Section 67-701(B) of the Code of Virginia now provides that a solar power restriction in the covenants will be deemed to be unreasonable if application of the restriction to a particular proposal (i) increase the cost of installation of the solar energy collection device by five percent (5%) over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent (10%) below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the community association in order to establish that the restriction is not reasonable according to the criteria set forth in Section 67-701(B).

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