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Community Associations Newsletter

MARYLAND LEGISLATIVE UPDATE

Virtual Meetings and Basketball Hoops!

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*This legislative session was the most transparent and accessible session ever. However, between the constant Zoom committee meetings, voting sessions livestreamed via YouTube and plexiglass desks on the Senate floor it certainly looked very different than sessions in the past. The following bills passed the Maryland General Assembly in the 2021 session and are on Governor Hogan's desk for signature. The laws **will become effective (unless otherwise indicated) on October 1, 2021**. Please contact us if you have any questions.*

VIRTUAL MEETINGS (Effective June 1, 2021)

This legislation, which had the support of the Maryland Legislative Action Committee (MD-LAC) of the Community Association's Institute, will clarify that the governing body may conduct and hold meetings via telephone conference, video conference or similar electronic means such as Zoom or some other similar platform. This bill was extremely important in the wake of the COVID-19 pandemic when mandatory shelter in place orders were enacted and in-person gatherings prohibited.

This law will continue after the emergency orders are lifted and will allow communities the flexibility to conduct meetings by phone, virtually, in person or both. We have seen an increase in participation by homeowners with the use of this virtual technology in a number of communities.

Under the new law, all virtual meetings (for an HOA, Condominium or Cooperative) must be conducted in a manner that will permit any member in attendance to hear and be heard by all

other members participating in the meeting. The association must provide the link or instructions on how to access the meeting in the notice of meeting provided to all of the members. All of the members present by telephone conference, video conference or other similar electronic means shall be deemed present for quorum and voting purposes. If members are not physically present at the virtual meeting they can vote by proxy in accordance with the governing documents and the Board can set a deadline for return of the ballots by electronic transmission but the deadline for the return of the ballots cannot be more than 24 hours after the conclusion of the meeting.

The new law also specifies that associations do not have to require nominations from the floor if there is at least one candidate for each open position. Lastly, if a homeowner is unable to join because of technical difficulties, it does not invalidate the meeting, or invalidate any action taken at the meeting.

This new law will certainly help communities provide greater access for members and this is welcome news for those who were unclear if the law allowed for electronic meetings.

ADDITIONAL MEETING REQUIREMENTS

This bill clarifies current law with respect to the procedures for holding a second meeting if the first meeting does not achieve quorum. Under existing law, in the event no quorum is reached at the initial meeting, if a condominium or homeowners association follows certain procedures, then the members who show up at the “2nd” meeting are deemed to constitute a quorum (even if less than the quorum specified in the association’s governing documents).

The bill clarifies that the “2nd” meeting cannot be held earlier than 15 days from the initial meeting. The association must provide an additional notice not less than 10 days before the additional or continued meeting which indicates the date, time, place, and purpose of the additional meeting. The association can mail the notice, send the notice by electronic transmission, advertise the notice in a newspaper in the county where the association is located or publish the notice on the association’s website. The purpose of this new law is to make clear that you cannot hold the continued meeting or additional meeting the same day or even the next day after the initial meeting.

PORTABLE BASKETBALL APPARATUS

Many community associations across Maryland have provisions in their governing documents prohibiting the use of portable basketball hoops or provisions that restrict the use of the same within the community.

This new law adds Section 2-124 to the Real Property Article of the Maryland Code to state that a common ownership community cannot in its deed, declaration, covenant, contract, bylaws or rules impose unreasonable limitations on the location and use of a portable basketball apparatus provided that the *property owner owns or has the right to exclusive use of the area in which the placement and use of the basketball apparatus is to occur.*

Therefore, a community can still fully restrict or prohibit the placement and use of a portable basketball apparatus on the *common areas* of the association. However, on *property owned by the owner or exclusively assigned to such owner*, the association cannot impose any restriction or limitation that will increase the cost of using such an apparatus or decrease the ability to use such an apparatus as it was designed and intended.

COMPOSTING

This bill prohibits a condominium association or a homeowners association from enforcing any provision in its recorded covenants, declaration, bylaws or rules which would prohibit or unreasonably restrict an owner from contracting with a private entity to collect organic waste for composting or restrict the private entity from accessing the common elements or common areas to collect the organic waste material.

Additionally, in a homeowners association, the association cannot enforce a provision in its recorded covenants, declaration, bylaws or rules which would prohibit or unreasonably restrict owners from composting on their lot if the owner has the right to the exclusive use of the area where the composting is conducted and the owner observes all of the State and local laws regarding composting.

LOW-IMPACT LANDSCAPING

This bill prohibits associations from enforcing any provision in its recorded covenants, declaration, bylaws or rules which would impose unreasonable limitations on low-impact

landscaping on property that the owner owns or has exclusive use of. An “unreasonable limitation” includes a restriction that significantly increases the cost, decreases the efficiency, or mandates turf grass for the low-impact landscaping.

Low-impact landscaping includes bio-habitat gardens, pollinator gardens, rain gardens and xeriscaping that reduce or eliminate the need for supplemental water from irrigation (e.g., rock/etc.).

This bill will limit the ability of associations to control certain changes to an owner’s yard or other exclusive use area.

ELECTRICAL VEHICLE RECHARGING EQUIPMENT

This law adds a new provision to the Condominium Act and the HOA Act which prohibits enforcement of a provision of a covenant, declaration, bylaw or rule which would prohibit or unreasonably restrict the installation or use of electric vehicle recharging equipment *in an owner’s deeded parking space or space that is specifically designated for the owner’s use.*

The association can require that the owner submit an application for installation of the charging station just as it would for any other architectural modification, but the association cannot willfully avoid or delay the processing and review of the application. In fact, if the application is not denied within 60 days after receipt of the application then it shall be deemed approved by the association.

The association can deny an application if it unreasonably impedes the normal use of an area outside of the unit owner’s parking space. Also the owner must agree in writing to use a licensed contractor to install the equipment, comply with all relevant building codes, safety standards, *architectural standards* of the association and pay for the usage associated with the separately metered electric vehicle recharging equipment.

The owner shall be responsible for the installation costs, costs for any damage and restoration to the common areas or limited common areas resulting from the installation, maintenance, repair, removal, or replacement of the equipment. Additionally, the owner must obtain any necessary permits or approvals from the county or municipality where the property is located, as well as provide a certification of insurance naming the association as an additional insured or reimburse

the association for the costs of any increase insurance premium related to the electric vehicle equipment.

RESERVE STUDIES- (MONTGOMERY COUNTY ONLY)

This new law amends the Cooperative Act, the Condominium Act and the Homeowners Association Act to require (only in Montgomery County) that associations obtain professional reserve studies and fund their reserves to the amount recommended in the reserve study.

This bill is almost identical to legislation passed last session that applied only to Prince George's County. Just like with the bill last session, the reserve study must be prepared by a person who has prepared at least 30 reserve studies within the last three years; someone who has a bachelor's degree in construction management, architecture, engineering or equivalent experience and education; holds a license from the State Board of Architects or the State Board for Professional Engineers; or is currently designed as a reserve specialist by Community Association Institute (CAI) or the Association of Professional Reserve Analysts.

If an existing association had a reserve study done on or after October 1, 2017 then it is required to have an updated reserve study done within 5 years after the date of the previous reserve study. If the association has not had a reserve study done on or after October 1, 2017 then it must obtain a reserve study *by October 1, 2022* and all subsequent reserve studies for all associations must be updated at least every 5 years afterwards.

The law states that an association "*shall provide funds to the reserve in accordance with the most recent reserve study and shall review the reserve study annually for accuracy.*" Further, that the association "*has the authority to increase an assessment...to cover the reserve funding amount...*" notwithstanding any caps or assessment restrictions in the governing documents.

Note that this law will have an immediate impact on most existing community associations in Montgomery County. The expense of a reserve study should be planned and budgeted for 2022 (or within 5 years of the last study) and the funding mandate will have to be considered as well.

If you have any questions about the contents of this memo, please contact one of our Maryland-licensed community association attorneys.