

# May 2021

## *Community Associations Newsletter*

### **2021 Legislative Updates**

**By: Todd A. Sinkins and Kelly C. Zook**

**D**uring its 2021 legislative session, the General Assembly approved a number of bills that affect Property Owners' and Condominium Associations. The legislation addressed in this newsletter will take effect on July 1, 2021, unless otherwise noted below.

#### Virtual Meetings and Electronic Voting:

Associations now have a permanent solution to holding convenient meetings and boosting participation among members. House Bill 1816 and Senate Bill 1183 amend both the Virginia Property Owners' Association Act and Virginia Condominium Act to permit virtual meetings, electronic voting and electronic communication unless expressly prohibited by the governing documents. The good news is that most governing documents do not address, let alone expressly prohibit, virtual meetings, electronic communication, or electronic voting.

Pursuant to the bills, virtual meetings of associations, executive boards, and committees may be held entirely or partially by electronic means. Electronic means is defined to include "teleconference, video conference, internet conference or other electronic methods." In order to hold virtual meetings, the board must adopt guidelines for the use of electronic means for such meetings. The guidelines adopted by the board must ensure that persons accessing the virtual meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The bills also grant boards with the authority to determine whether a meeting shall be held entirely or partially by electronic means. This authority is in addition to the pre-existing authority for nonstock corporations to conduct meetings electronically.

With respect to electronic voting, House Bill 1816 and Senate Bill 1183 allow members of associations to vote at meetings of the association in person, by proxy, or by absentee ballot. In order to vote by electronic means, the board must adopt guidelines for such voting. The board must also ensure that the electronic means protects the identity of the voter if the governing documents require a vote, consent, or approval to be obtained by secret ballot. If the electronic means cannot protect the identity of the voter, the board must use another means of voting.

House Bill 1816 and Senate Bill 1183 also permit electronic communication to the members. In lieu of delivering notice by United States mail or hand delivery, associations may send notice by electronic means if consented to by the owner to whom the notice is given. House Bill 1816 and Senate Bill 1183 remove the prior requirement that the governing documents or rules and regulations of the association must expressly provide for electronic communication.

While the law does not go into effect until July 1, 2021, we recommend that associations adopt guidelines for virtual meetings and electronic voting in the meantime. If you would like our assistance in discussing these issues or drafting the guidelines, please do not hesitate to contact your attorney at Rees Broome for assistance.

#### Smoking Restrictions:

House Bill 1842 amends both the Virginia Property Owners' Association Act and Virginia Condominium Act to provide an association's Board of Directors with extensive authority to prohibit smoking within condominiums and property owners' associations. A Board of Directors of a condominium association may, by a majority vote of the Board, prohibit smoking both in the common elements and in units, unless the recorded condominium instruments contain existing language that would prohibit the Board from doing so. A Board of Directors for a property owners' association may prohibit smoking in common areas and within attached private dwellings (i.e. townhouses) by a majority vote of the Board, unless the existing Governing Documents contain language that would prohibit the Board from doing so. If a Board adopts such rules, they may be rescinded through a vote of the membership held at a special meeting of the owners.

Boards now have the ability to adopt rules within their community to curb smoking. We understand that there are complex issues created by adopting rules that address smoking within a person's home. If you would like our assistance in discussing these issues or drafting smoking rules, please do not hesitate to contact your attorney at Rees Broome for assistance.

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### Requests for Accessible Parking:

House Bill 1971 amends Section 36-96.3:2 of the Code of Virginia which is referred to as the Virginia Fair Housing Law. If an association receives a request for accessible parking, the request needs to be treated as a reasonable accommodation request. Therefore, if the request is reasonable and does not impose an undue financial or administrative burden to or a fundamental alteration to the operations of the association, the association will be required to pay for costs related to installation, design, marking, and/or reconfiguration to accommodate the request.

### Dangerous Dogs:

Senate Bill 1135 added Section 3.2-6540.01(H) to the Code of Virginia which provides that any contract or agreement for the use of real property, including recorded restrictive covenants, condominium instruments, declarations or cooperate instruments, may prohibit the keeping of a dangerous dog or otherwise impose restrictions that are more restrictive than those required under Section 3.2-6540.01(B).

### Courts:

Senate Bill 1108 amends Section 8.01-195.4 of the Virginia Code to increase the jurisdiction of general district courts from \$25,000 to \$50,000, exclusive of interest and attorney fees.

Senate Bill 1327 increased the amount of a judgment on which judgment creditors, such as associations, can foreclose a property from \$25.00 to \$25,000.00, where the property is the owner's primary residence.

House Bill 2099, effective January 1, 2022, reduces from 20 years to 10 years from the date of a judgment the period of time within which an execution may be issued or action may be taken on such judgment. The bill provides that the limitation of the enforcement of a judgment may be extended up to two times by a recordation of a certificate prior to the expiration period in the clerk's office in which a judgment lien is recorded. The bill provides that such recordation shall extend the limitations period for 10 years per recordation from the date of such recordation. Under current law, such limitation period may be extended on motion of the judgment creditor or his assignee. The bill allows a settlement agent or title insurance company to release a judgment lien, in addition to a deed of trust as provided under current law, provided that the obligation secured by such judgment lien has been satisfied by payment made by the settlement agent and whether or not the settlement agent or title insurance company is named as a trustee under such lien or received authority to release such lien.

If you have any questions, please don't hesitate to contact your Rees Broome Attorney.

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