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Community Associations Newsletter

2023 Virginia Legislative Updates

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IN contrast to last year, the 2023 legislative session was extremely active, with the General Assembly passing a number of significant bills that affect Common Interest Communities. The legislation addressed in this newsletter will take effect on July 1, 2023, unless otherwise noted below.

Common Interest Community Ombudsman and Complaint Process:

The Governor signed into law SB 1042, which creates the most significant changes to the process governing the submission and decisions of the Common Interest Community Ombudsman since the position was created by statute in 2007. This Bill changes the laws to allow the Ombudsman, upon receiving any notice of a final adverse decision issued by an association, to either (i) refer such final adverse decision to the CICB for further review of whether such decision is in conflict with relevant laws or regulations or (ii) make a determination of whether such final adverse decision conflicts with relevant laws or regulations. If the Ombudsman determines that such final adverse decision conflicts with relevant laws or regulations, the Bill requires the Ombudsman to promptly notify the Association and its community manager of such determination. If the Ombudsman receives a subsequent notice of final adverse decision for the same violation within one year of such determination, it shall refer the matter to the CICB. Accordingly, it creates an elevated review process with punitive measures for community associations that are repeat offenders.

One significant change in the process is that previously, the decisions of the Ombudsman were advisory in nature and not binding on the parties. That will no longer be the case. Instead, the decisions of the Ombudsman will be binding on the parties and not subject to appeal.

Assistance Animals:

HB 1725 amends the Virginia Fair Housing law to make it illegal for a person in a therapeutic relationship with the requesting person to provide fraudulent supporting documentation to evidence the existence of a disability or disability-related need for a person requesting a reasonable accommodation. Additionally, this Bill makes such a violation a prohibited practice under the Virginia Consumer Protection Act. This law will make it harder for individuals to falsely claim that they are entitled to a reasonable accommodation due to disability and will create a legal disincentive for medical providers and other individuals in a therapeutic relationship with a person with disability to provide fraudulent support for a reasonable accommodation request made under false pretenses.

Management Agreements:

The Governor signed into law HB 1519, which provides that a management contract that contains an automatic renewal provision may be terminated by the association or unit owners' association, as the case may be, or by the common interest community manager at any time without cause upon not less than 60 days' written notice. This will serve to create a statutory right for associations that have a management contract that does not contain a termination clause to exit a contract without cause and without penalty if the contract contains auto-renewal language.

Liability for Public Trails:

The Governor signed SB 807, which authorizes a locality or park authority to establish, conduct, and regulate a system of walking trails and releases from certain civil liability the owner of any property that the public can access under a lease, license, or easement agreement for such use in the absence of gross negligence or willful misconduct. This is a Bill that arose out of discussions between Rees Broome and a local county that wanted a public access easement across and association's common area trail system but was unable to provide the association with adequate liability protections associated with the public access easement use. This Bill addresses a gap in existing statutory law and will allow associations to provide public access easements across their trail systems without taking on significant additional liability exposure.

Resale Disclosure Act:

Governor Youngkin signed into law SB 1222, which replaces the resale disclosure provisions in POA Act and the VA Condominium Act with a new Resale Disclosure Act. This new law requires every seller to obtain a resale certificate and provide that certificate to their prospective purchaser.

The law also expands the list of mandatory disclosures to thirty (30) separate disclosure statements in the certificate, which will serve to substantially increase the level of information and

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scrutiny that an association will need to apply to a resale. For the first time, the law now requires a complete copy of the adopted budget, instead of a summary of the budget as was permissible under the prior law. Also, there must be specific disclosures of the nature of any restrictions related to parking within the community, any leasing restrictions and any home-based business restrictions. Additionally, the preparer of the resale certificate and managing agent must be expressly identified, including their address and telephone numbers.

With respect to fees, associations and their management agents can require resale disclosure fees to be paid upon preparation of the certificate rather than having to wait to collect such fees at settlement. In order to be permitted to collect such fees, associations must publish and provide to requesting sellers a schedule of all applicable fees charged for the preparation and delivery of a resale certificate.

Also, this new statute imposes greater consequences for errors in the disclosure statements. For instance, if the assessment rate disclosed in a resale certificate is incorrect, the Association will be bound by that mistake and the purchaser can only be assessed at the incorrect, disclosed rate. Similarly, an association may only enforce a violation incurred by a previous owner against a purchaser if: (i) such violation has been properly noted in the resale certificate or updated resale certificate; or, (ii) the seller failed to provide the resale certificate to the purchaser as required by § 55.1-2309.

There also are penalties imposed on an association if a seller is damaged by a mistake in the resale certificate. Specifically, the preparer of the resale certificate or updated resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000.

We understand that the changes in the law for 2023 are extensive any will impact the operations of most of our community association clients. We are happy to help you to navigate these new laws. If you have any questions or would like our assistance, please do not hesitate to contact your Rees Broome attorney.

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