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Virginia Legislative Update 2024

Community Associations Newsletter

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The 2024 Virginia legislative session was a busy one! Over 3,500 bills were introduced in the session and many of them impacted community associations in some way. A summary of the most pertinent proposed legislation which passed is below, as well as a two of the more critical bills we anticipate returning to the General Assembly in the 2025 session.

One of the most significant pieces of legislation was SB672. This legislation, which is effective July 1, 2024, is the fruit of successful community association advocacy and lobbying efforts due to a troubling 2023 ruling of the Virginia Court of Appeals (Burkholder et al v. Palisades Park Owners Association, Inc.) That ruling is considered by many to be a misinterpretation of Va. Code § 55.1-1805, a provision of the Virginia Property Owners' Association Act. The legislation enacts changes to Va. Code § 55.1-1805 and its equivalent section in the Virginia Condominium Act (Va. Code § 55.1-1904) to ensure that associations may continue to levy declaration-based assessments to pay for their expenses incurred to carry out contractual and other legal obligations and authorities, whether related to the Common Areas/Elements or Lots/Units. In addition to this protective intention, the legislation clarifies that associations may impose charges against less than the entire membership, if authorized by statute, law, or the declaration, and if the charge relates to services provided or to use of the common areas/elements.

HB341 and HB800 are bills going into effect July 1, 2024, and significantly impact liens and foreclosure remedies for both condominiums and property owners' associations. The legislation amends the Condominium Act and Property Owners' Association Act by establishing a minimum threshold of $5,000 in assessments, interest, and late fees (excluding attorney fees and costs) that must be secured by lien to permit commencement of statutory lien non-judicial foreclosures. While the bills brought an increase to the threshold for non-judicial foreclosures, they reduced the monetary threshold to commence a judicial foreclosure proceeding from a required judgment principal of $25,000 to $5,000 (excluding interest and costs, including attorney fees). Of note, judgments may be combined to reach the minimum threshold for the judicial foreclosure proceeding. These bills also extended the enforcement period for statutory liens from 36 to 120 months.

HB1209 is effective July 1, 2024. This bill addresses some lessons learned from the Surfside Tower collapse particularly focused on ensuring Boards and associations can address on-going

and critical maintenance and repair needs for capital components. This bill amends both the Property Owners' Association Act and the Condominium Act, by removing owner authority to rescind or reduce special assessments levied by the Board of Directors to provide for maintenance, repair, and replacement of capital components. The legislation also specifically authorizes associations (through Board of Directors approval) to borrow money to provide for maintenance, repair, and replacement of capital components, and to be able to pledge revenue from assessments as collateral, as many governing documents are silent on this authority.

HB876, SB526, and HB105 amend the Resale Disclosure Act and are effective July 1, 2024. Some of the changes from the bills were focused on technical edits to ensure clarity and consistency in use of terms of code references. The amendments state that a resale certificate is considered "unavailable" if not delivered within 14 days and that a purchaser may cancel a contract within 3 days of receipt of the resale certificate or notice of its unavailability, which now has a clear definition. The bills ensure that a purchaser's authorized agent may be entitled to receive the certificate. The legislation also clarifies that a seller pays all resale fees, but settlement agent or other requesting party may assume such if paid up front. The bill states that financial updates can be paid when the certificate is requested or at closing, based on association instructions. In addition, the bill enacts an exemption for required resale certificates, by stating that a certificate need not be issued in case of non-resident initial disposition or initial disposition for new construction unless the buyer requests the certificate.

There are two bills focused on towing practices with potential impact on common interest communities. The first, HB925, imposes a 48-hour advance notice requirement with posting on a vehicle for towing for certain reasons within multi-family properties. Amendments were passed to the original bill which expressly exempted common interest communities from being subject to these requirements. However, HB959, effective July 1, 2024, could impact common interest communities towing practices and parking policies. Specifically, HB 959 expands localities' existing statutory authorities to enact laws requiring property owners to give advance authorization for any tow from private property, and such cannot be achieved by contract alone with a tow operator. This could make roam towing more difficult, as it will require an express approval for tows, if an association is located within a locality which enacts an ordinance requiring advance authorization. It is always important for associations to review local ordinances related to towing practices, such as related to signage and authorization requirements when reviewing parking policies or towing contracts.

Two significant bills that were not passed and we anticipate will come back in 2025 are HB 214 and HB528. HB214 amends Va. Code § 54.1-2347 and Va. Code § 60.2-210. The amendments create a presumption of independent contractor status for residents providing bookkeeping, billing or record keeping services for a common interest community. The bill also exempts common interest communities with these arrangements from falling under the definition of "employer" for purposes of the Virginia Unemployment Compensation Act. Governor Youngkin vetoed this bill and recommended the legislature revisit the issue in 2025. HB528 is legislation intended to protect

owners' rights to install "managed conservation landscaping" upon their lots and was not passed with an anticipated return in 2025. This legislation is conservation minded with an eye towards promoting natural growth and eco-friendly landscaping practices. This legislation looks similar in some ways to prior solar panel legislation in that it states that, unless expressly authorized in the declaration, associations cannot prohibit an owner from installing managed conservation landscaping upon their lot.

The difficulty with this legislation is that no existing declaration is likely to have an express reference to this newly defined term, "managed conservation landscaping" and therefore almost all associations in existence at the time of the enactment of the legislation would be prevented from prohibiting this landscaping without a membership approved amendment to the declaration. Opponents to the bill consider the legislation to be an avenue for possible abuse for persons looking to neglect their yards or encourage inappropriately overgrown or wild growth with negative impacts on neighbors. Opponents also view the bill as gutting one of the primary authorities of many associations, which is to regulate proper landscaping care and maintenance, the scope of which can vary from community to community based on a variety of factors such as size of yards and urban v. rural landscape. The bill does include a specific definition of "managed conservation landscaping" and notes that it " does not include turf grass lawns left unattended for the purpose of returning to a natural state." The bill also provides that associations may establish reasonable restrictions concerning the management, design, and aesthetic guidelines for managed conservation landscaping features. However, the bill limits what is considers a reasonable restriction by providing that a restriction shall be deemed to be unreasonable if such restriction (i) significantly increases the cost of managed conservation landscaping, (ii) significantly decreases the efficiency or viability of managed conservation landscaping, (iii) requires cultivated vegetation to consist in whole or in part of turf grass, (iv) requires the inclusion of any invasive species, (v) prohibits managed conservation landscaping from being used in the front or visible areas of a property, or (vi) limits the use of managed conservation landscaping to a percentage of the owner's property acreage.

We understand that the changes in the law for 2024 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.