



# Legislation Affecting Virginia Community Associations

## The 2001 Session

By Lucia Anna Trigiani, Esq.

The 2001 Session of the Virginia General Assembly convened on January 10, 2001 and adjourned on February 24, 2001. This was a "short session" of the General Assembly. Much attention was given to budget amendments and the impasse between the Senate and the House of Delegates and the Governor on the status of the car tax.

Session statistics again reveal a record number of legislative measures considered. However, new rules restricting the number of measures a legislator could introduce and establishing early filing deadlines did seem to have an impact on the volume of bills. In all, the General Assembly considered a total of 2,645 bills introduced this year and another 553 bills carried over from the 2000 Session.

Substantially less than half of the total bills considered were passed by the Senate and the House of Delegates and forwarded to the Governor for signature. A total of 1816 bills failed. The Governor vetoed seven measures this year, but none of the vetoed bills were bills affecting community associations. The General Assembly voted to override the Governor's veto on two of those seven measures.

We followed 13 bills that were introduced and considered to amend the Virginia laws that govern and affect common interest ownership community associations. The number of legislative measures is much smaller than the two prior sessions, where we followed 25 or more bills each year. Of the 13 bills we followed, only seven measures passed. Several of the bills that failed have been diverted into studies to be conducted during the summer and fall by the Virginia Housing Study Commission. The bills that passed have been signed by the Governor and become effective July 1, 2001.

The amendments again focus on changes to both the Condominium Act and the Property Owners' Association Act. In most instances, the changes are identical in each statute. Legislators are increasingly attentive to keeping changes to these statutes parallel whenever appropriate. So, even though a bill was introduced with provisions that amend one of the two statutes, during consideration of the bills, the changes were made applicable to both statutes.

Our summary includes a review of all the legislation that we followed; legislation that passed and failed. The changes are significant, but what continues to be of equal significance is the legislation that failed. As we monitor the trends in legislation, we see continuing efforts to affect community association operations by modifying the laws that govern community associations. This trend is also evident in the legislative studies that will continue during the period between sessions.

### Proposed Legislation

Introduced by Delegate Vincent F. Callahan of McLean, the bill requires the executive organ of a condominium unit owners association or the board of directors of a property owners association to publish notice of its meetings and to provide notice to those owners who made a written request to receive notice of board meeting. The bill also defines *meeting* to mean a formal gathering of the board where association

business is discussed or transacted. The bill prohibits the board from using work sessions or other informal gatherings to circumvent open meeting requirements of the statutes. The bill also requires the board to establish a reasonable, free and effective method for unit owners to communicate, appropriate to the size and nature of the community.

### House Bill 1836

#### Property Owners' Association Act; validity of declaration

Introduced by Delegate William J. Howell of Fredericksburg, the bill makes a technical correction by changing the term *condominium instrument to declaration*. Condominium instrument is a term of art and defined term in the Condominium Act and is not applicable to the Property Owners' Association Act.

### House Bill 2126

#### Real Estate Time-Share Act

Introduced by Delegate Leo C. Wardrup, of Virginia Beach, the bill clarifies the definitions of "exchange program" and "incidental benefit." The bill also expands the definition of "time-share estate occupancy expenses" to include (i) expenses for the formation, organization, operation and administration, including capital contributions thereto, of the association and both its board of directors and its members and (ii) filing fees and annual registration charges of the State Corporation Commission and the Real Estate Board; counsel fees and accountant charges; and reserves for any of the foregoing, which must be paid by the time-share owners. The bill authorizes the association to file a lien for unpaid and past due maintenance fees and for any other charges owing occasioned by the failure of the owner to pay the assessments or maintenance fees, including late charges, interest, postage and handling, attorneys' fees, recording costs and release fees in addition to the currently authorized lien for unpaid assessments. The bill eliminates the filing deadline of one year from when the assessment became due for an association to perfect a lien. The bill provides that the cost of recording the memorandum of lien shall be taxed against the owner of the time-share on which the lien is placed versus current law that provides that such cost is taxed against the person found liable.

### House Bill 2127

#### Provisional membership fees and the duties and liabilities for copying association records

The bill was introduced by Delegate Terri G. Suit of Virginia Beach to clarify that the charges that an association may impose for copying association records are limited to the reasonable costs incurred by the association, but are not to exceed the actual costs, for labor and materials.

### House Bill 2128

#### Provisional membership fees and the duties and liabilities for copying association records

This bill was also introduced by Delegate Suit and is a recommendation of the Virginia Housing Study Commission. Delegate Suit chaired the Virginia Housing Study Commission work group on community as-

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sociations that developed this proposal.

The bill authorizes the Real Estate Board to designate a community association liaison responsible for administering the requirements of Common Interest Community Management Information Fund. The liaison will also serve as an information resource on issues relating to the governance, administration and operation of common interest communities, including the laws and regulations relating thereto. Such information may include non-binding interpretations of laws or regulations governing common interest communities and referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members.

The compensation for the community association liaison shall be paid from the Fund; provided that no more than 60 percent of the moneys collected annually in the Fund shall be used for such purpose. The remainder of the money in the fund is to be used for education and research on community association issues.

**House Bill 2515**      **Condominium Act; resale certificates; Property Owners' Association Act; association disclosure packets**

The bill was introduced by Delegate John S. (Jack) Reid of Henrico County. The bill amends the Condominium Act and Property Owners' Association Act provisions concerning the resale certificate and the association disclosure packet. The bill provides that the resale certificate and disclosure packet must be current as of the date of issuance. Currently, these disclosure documents must be current within 30 days from the date of the purchase contract.

The bill also provides that the purchaser may request, at the purchaser's expense, an update to the resale certificate or disclosure packet. The

bill also amends the resale certificate and association disclosure packet statements to require the association to include a copy of notices of any pending architectural violations. And, the bill limits copying costs that the association may charge to 10 cents per page. The \$100 fee cap for the resale certificate or association disclosure packet and \$50 fee cap for updates were left intact, even though there were discussions to reduce the amount of the fees that may be charged by an association for preparation of these disclosure documents.

The bill also amends the Condominium Act to delete the exemption of builder to owner sale because the provision is not relevant to condominium sales.

**Senate Bill 874**

**Conditional zoning**

Introduced by Senator John Watkins of Midlothian, the bill provides that localities shall not include, as part of the conditional zoning process, conditions that require the applicant to create a property owners' association that includes an express further condition that members of a property owners' association pay an assessment for publicly owned public facilities, including open space, parks, schools, and fire departments. Senator Watkins introduced a similar bill in the 2000 session, but that bill failed. He re-introduced the measure in the 2001 session with modifications.

**Failed Legislation**

**House Bill 1988**

**Income tax; taxable income of residents; deduction for common interest community**

The bill was introduced by Delegate Richard H. Black from Loudoun County. Delegate Black introduced a similar bill in the 2000 Session. The bill

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provides a proposed deduction to individuals when calculating their Virginia taxable income for that portion of the regular annual assessment attributable to the equivalent of municipal services paid to a common interest community. The bill was passed by indefinitely by the Finance Committee on January 22, 2001, again thwarting efforts to afford community association residents tax relief for the common expense assessments they pay.

**House Bill 2311**

*Property Owners' Association Act; capital improvement fee*

Introduced by Delegate V. Earl Dickinson of Louisa, the bill proposed amendments to the Property Owners' Association Act to authorize the board of directors of an association to impose a capital improvement fee on lots that are resold or transferred. Under the bill, the board must first determine that the imposition of the fee is in the best interest of the association. The proceeds of such an assessment were to be used exclusively for new capital improvements or replacement of existing common elements.

Under the bill, the association membership may, at a meeting held within 60 days of the notice of the imposition of the fee, vote to rescind or reduce the fee. The total amount of the capital improvement fee shall not exceed the annual assessment charged to the lot during the most recently completed fiscal year of the association or \$1,000, whichever is higher. The bill requires that capital improvement fees collected by the association be maintained in a separate capital improvement account and prohibits a capital improvement fee from being imposed on certain gratuitous transfers between family members and where the owner of the lot transfers the lot to a trust entity.

On recommendation of Subcommittee No. 1, the bill was referred to the Housing Study Commission to be considered as part of the Commission's continuing study of reserve funds. The bill was passed by in the full

House General Laws Committee with a letter referring the bill for study.

**House Bill 2567**

*Property Owners' Association Act; contract disclosure*

The bill was introduced by Delegate James Scott of Merrifield and requires a person selling a lot in a property owners' association to disclose in the contract whether there exist any violations of the declaration or rules and regulations adopted pursuant thereto for which the purchaser is or may be liable. This contract disclosure is in addition to other contract disclosures currently required under the Property Owners' Association Act. The bill provides that its provision shall not apply to any contract entered into before July 1, 2001. The General Laws Committee incorporated the bill into House Bill 2515.

**Senate Bill 925**

*Occupancy of Dwellings in Fairfax County*

Introduced by Senator Leslie Byrne of Falls Church, this bill received note from the national and local press. The bill proposed to authorize the Board of Supervisors of counties with the urban county executive form of government (applicable only to Fairfax County) to allow the Board to adopt an ordinance that requires a special use permit be obtained for occupancy of single-family dwellings by more than four persons not related by blood, marriage or adoption if the dwelling has living space of less than 2,000 square feet or has fewer than two bathrooms. The bill was reported from the Senate Committee on Local Government with a substitute by a vote of 10-5, but was heavily debated on the Senate floor. Ultimately, the Senate struck the bill from the calendar by a vote of 39-1.

**Senate Bill 1185**

*Beaver damage*

Introduced by Senator Malfourd W. (Bo) Trumbo of Fincastle, the bill  
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proposed to allow landowners, whose property has been damaged due to the damming of a water body by beaver activity, to seek injunctive relief against the landowner upon whose property the beaver are located. The injunctive relief may require the owner of the property where the beaver are located to remove beaver dams that are diverting water from or impounding water on an adjacent landowner's property and may require that the offending landowner provide such other relief as is necessary to prevent further damage to the adjacent landowner's property. The landowner damaged by the beaver activity would be entitled to reasonable attorney's fees.

The bill was reported by Committee on Agriculture on a split vote, and passed the Senate by a vote of 24-15. The bill was then referred to the House Committee on Conservation and Natural Resources and was tabled in Committee.

The bill was introduced by Senator Benjamin Lambert of Richmond and sought to amend the Property Owners' Association Act to provide that the declaration may specify the period of declarant control. The bill would have also provided that the declarant control period shall be as specified in the declaration or after three-fourths of the lots have been conveyed, whichever occurs first.

In addition, the bill required that the association disclosure packet contain a statement setting forth the plan for the transfer of control of the development to the owners. The bill also proposed to amend the books and records section to require the association to maintain a map indicating common areas owned by the association and lots. The developer would have been required to provide a map of the common areas within the community on transition.

The Senate General Laws Committee reported the substitute by a vote of 15-0. Senator Mims amended the bill on the floor of the Senate. With those amendments, the bill passed the Senate by a vote of 39-0. The bill was then forwarded to and considered by House Committee on General Laws. The General Laws Committee tabled the bill by a vote of 25-0. Issues raised during consideration of the bill will be considered by the Housing Study Commission in legislative studies to be conducted in preparation for the 2002 Session of the General Assembly.

The General Assembly will review several issues affecting community associations during the break between sessions. Some of the issues are continuing issues from resolutions introduced during the 2000 session.

Introduced in the 2000 Session by Delegate Alan A. Diamonstein of Newport News, the Housing Study Commission considered, but did not conclude its review of this issue in 2000. The concerns giving rise to the study include the aging of condominiums and the need for major structural repairs to common areas. The study will likely be expanded to look at the issue of reserves in all common interest ownership communities.

Introduced by Delegate Michele B. McQuigg of Prince William County in the 2000 Session, the bill proposed repealing the non-judicial foreclosure provisions of the statutes. The bill was put into study by the Housing Study Commission. On recommendation of the Housing Study Commission, no legislation was proposed pending action by the Nation-

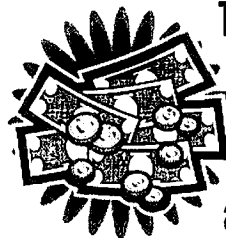
al Commission on Uniform State Laws. The National Commission on Uniform State Laws is developing recommended statutes for non-judicial foreclosure. If those recommendations are developed, the Housing Study Commission will consider that legislation in its 2001 work plan.

Introduced by Senator Mary Margaret Whipple of Arlington, a member of the Virginia Housing Study Commission, the resolution requests that the Commission, with the assistance of the Virginia Housing Development Authority and the Virginia Department of Housing and Community Development, study certain housing issues. Included among the several issues to be considered is whether the period of developer control of a property owners' association should be limited.

More specifically, the question is whether that control period should conclude at the point at which three-fourths of the lots, as designated in the plan for development filed with the locality, have been conveyed as improved lots to owners in the association. Additionally, the Commission has been asked to consider other issues relating to property owners' associations as noted in Senate Bill 1423. Those other issues include the information delivered the association by the developer upon transition and disclosures provided to prospective purchasers concerning the common area within a community association.

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