

# 2006 Session of the Virginia General Assembly

By Thomas G. Freeley, AMS, and Lucia Anna Trigiani, Attorney at Law, CCAL

## Session Overview

The 2006 Session of the Virginia General Assembly convened on January 11, 2006 and adjourned on March 11, 2006. This was a "long session" of the General Assembly, during which the state budget was under consideration. The House and Senate were unable to reach agreement on the budget before *sine die*, prompting Governor Timothy M. Kaine to call a Special Session of the General Assembly. The Special Session convened on March 27, 2006 to address the budget and revenues of the Commonwealth and had not yet concluded as of our publication deadline.

In all, a total of 3,286 bills, were introduced this year. Of the bills introduced, 358 bills were continued for consideration in the 2007 Session. The General Assembly acted on more bills than in the 2004 and 2005 sessions. Ultimately, 958 bills were passed by both the Senate and the House of Delegates and forwarded to the Governor for signature. A total of 1,180 bills, failed.

The Governor vetoed seven measures, several of which had to do with the Governor's appointment powers. The Governor recommended changes to a number of bills. Most of his recommendations were accepted, however, his recommendations were not accepted on a number of bills. As a result, the Governor vetoed an additional eight bills for which his recommendations were rejected.

The 2006 Session was again a busy one for the community association industry. The Virginia Legislative Action Committee of Community Associations Institute (VALAC) monitored more than 25 bills affecting laws of interest to community associations. It was a significant Session for the industry because several measures were the direct result of cooperative efforts with other industry groups. The VALAC continues to develop relationships with legislators and other lobbying interests.

In the end, the legislature passed fewer bills amending the laws that directly affect community associations than in past years. In some cases, the bills that failed during this session are as significant as those measures that passed. Following is a summary of the bills the VALAC followed – both passed and failed – with special attention to the changes, most of which become law on July 1, 2006. As noted in the following summary, some measures have a delayed effective date.

## Passed Legislation

**Condominium Warranty.** The Virginia Association of Home Builders proposed an amendment to the warranty provisions of the Condominium Act to require a condominium unit owners association to give notice and an opportunity to correct a structural defect before filing legal action to enforce the structural warranty. The VALAC worked with the Home Builders to refine the legislation – to include a delayed effective date (January 1, 2007) and a reasonable time to cure the defect.

The bill provides that a written statement by the claimant or his agent, attorney or representative, of the nature of the alleged defect must be sent to the Declarant, by registered or certified mail, at the Declarant's last known address, as reflected in the records of the Real Estate Board, more than six months prior to the commencement of the action to enforce the warranty obligation. The bill provides that sending the required notice tolls the statute of limitations for commencing a breach of warranty action for a period not to exceed six months.

**Condominium Zoning Applications.** The VALAC worked with developer interests to refine provisions of the Condominium Act that address zoning. In response to requirements imposed by localities on certain developers to obtain the signatures of all unit owners in a condominium on land use applications, such as zoning or site plan applications, developers sought to clarify that the Declarant of the condominium is the proper signatory on such applications.

Under this legislation, the Declarant is authorized to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures related to the condominium during the period that the condominium is under his control. The bill also provides that once the condominium is no longer under the control of the Declarant, the executive organ of the unit owners association or a representative appointed by the unit owners association has the authority to sign such applications. The bill also clarifies who are the owners of condominiums for purposes of compliance with the disclosures in land use proceedings.

**Conversion Condominiums.** One of several bills to amend the conversion provisions of the Condominium Act was passed.

With the increased number of conversions, several bills were introduced to amend Section 55-79.94 of the Act. The bill that passed requires the Virginia Real Estate Board to issue a notice of filing of a conversion condominium to the chief administrative officer of the county or city in which the proposed condominium is located within five business days, also. The notice shall include the name and address of the applicant and the name and address or location of the proposed condominium.

**Solar Panels.** A small part of a controversial bill establishing an energy plan for Virginia also sought to limit the authority of community associations to restrict the installation of solar panels. Like legislation to limit the display of flags and posting political signs discussed below, this bill initially sought to abrogate restrictive covenants prohibiting the installation of solar panels. Through the efforts of the VALAC, the bill was amended to provide that restrictions limiting such installations must be in the recorded governing documents.

**Displacement of Private Waste Companies.** In the 2005 Session, the VALAC worked with apartment owners, trash haulers, and others to promote legislation to add to the procedural requirements applicable to localities before displacing private waste haulers. That bill was passed by both houses of the General Assembly, but vetoed by Governor Mark Warner. The bill introduced in the 2006 Session is identical to the bill introduced in the 2005 Session. VALAC again joined a coalition of affected industries, including apartment owners, commercial building owners, and the trash hauling industry, to promote this legislation. Those efforts were successful.

The legislation increases the procedures localities must follow before displacing private companies providing garbage, trash, or refuse collection services, including making a written finding of at least one of the following: (i) privately owned refuse collection and disposal services are not available; (ii) the use of privately owned or operated services has substantially endangered the public health or created a public nuisance; (iii) privately owned services, although available, are not able to provide needed services in a reasonable and cost-efficient manner; or (iv) displacement is necessary to provide for the development or operation of a regional system of refuse collection or disposal for two or more localities.

This bill challenged the capability of existing law that provided local government with the capability of removing the rights of open commerce and free enterprise. Community associations, as well as rental and commercial properties, hotels and even non-association homeowners could lose their capability of negotiating service contracts beneficial to their specific needs and desires. This bill provides better safeguards and requirements for local governments to prove the need to displace private waste haulers.

**Towing.** After a year long study of the towing industry – prompted by a study resolution passed in the 2005 Session, legislation was enacted during the 2006 Session to address a number of issues that directly affect the towing and recovery industry. The bill has numerous technical and clarification language changes and additions that are non-substantive. The substantive changes address such matters as increased hookup and storage fees. Cer-

tain particular provisions of the bill may have a significant impact on community associations.

Language in the bill gives localities enabling authority to establish ordinances restricting towing. Of particular concern is the following language: “... *obtain, at the time the vehicle is towed, the written authorization of the owner of the property from which the vehicle is towed, or his agent. Such written authorization, if required, shall be in addition to any written contract between the towing and recovery operator and the owner of the property or his agent....*” If a locality adopts ordinances based on this legislation, community associations would be required to have a “second signature” to authorize a tow. The second signature is in addition to the contract signature.

For example, if the community association has a parking policy utilizing parking stickers and the community association has entered into an agreement with a towing company to conduct *roaming* or *roving* tows to allow removal of vehicles parked without a proper identifying sticker, and the locality has adopted an ordinance, the association would be prevented from towing the vehicle without the tow company first obtaining written permission from the owner or agent at the time of the tow. This could have a very negative impact on parking enforcement, a frequent and serious issue for many community associations. It is advisable to monitor closely the actions taken by localities in light of this new authority. Prince William County, Virginia, currently has this language in the county ordinances.

## The bill that passed requires the Virginia Real Estate Board to issue a notice of filing of a conversion condominium to the chief administrative officer of the county or city in which the proposed condominium is located within five business days, also.

### Continued Legislation

**Display of Flags.** Legislation introduced in both the House and the Senate proposed amendments to both the Condominium and Property Owners' Association Acts to allow the flying of the flag. The bills sought to preclude condominium unit owners associations and homeowner associations from restricting flag display unless expressly provided in the declaration. The bills also proposed to require added disclosure of flag restrictions. Both bills were continued in the House General Laws Committee and will be considered by the Virginia Housing Study Commission during the recess.

**Display of Political Signs.** Like the proposed bills to restrict flag display, two bills were introduced to preclude the authority of a community association from restricting the display of political signs. Introduced in both the House and the Senate, these two measures were somewhat different. The bill introduced in the House sought to declare signage restrictions void; the bill introduced in the Senate, merely sought to limit signage restrictions to those restrictions established in the recorded governing documents.

The bills also established certain limitations on the posting of such signs – in other words, associations were entitled to restrict signage, but only under the following limited circumstances: (i) in the common areas or (ii) in accordance with federal or state law, and may establish reasonable restrictions as to the size, place, duration, and manner of placement or display of such signs, except that no restriction on the duration of the display of such signs shall be less than (a) 45 days before the primary election, general election, or vote on the proposition or (b) seven days after the primary election, general election, or vote on the proposition. ➔

The bills also require the association disclosure packet to contain a statement of any restrictions on the size, place, duration, and manner of placement or display of such signs. The bill also clarifies that the display of the flag of (i) the United States, (ii) the Commonwealth, (iii) any active branch of the armed forces of the United States, or (iv) any military valor or service award of the United States also includes display on mailboxes and similar structures. Both bills were continued in the House General Laws Committee and will be considered by the Virginia Housing Study Commission during the recess.

**Conversion Condominiums.** Legislation introduced in 2006 also sought to give authority to tenants of conversion condominiums to assign special tenant rights established under the conversion provisions of the Condominium Act to affordable housing agencies. These bills were carried over to allow the Housing Study Commission an opportunity to review the measures and concerns about conversions.

### Other Legislation of Interest

In addition to the legislation summarized above, the VALAC monitored legislation addressing the restraint of dangerous dogs, regulation of storm water management programs, and fair housing. Although the VALAC did not promote legislation concerning the responsibility of insurance deductibles under the Condominium Act, the VALAC did monitor legislation introduced to restore the language to the Condominium Act added and later removed from the Condominium Act which allowed condominium unit owners associations to recover costs associated with the insurance deductible.

### Conclusion

The community association industry fared well in the 2006 Session of the Virginia General Assembly. By participating in coalitions with other interest groups, the VALAC was more effective in advocating against legislation contrary to interests of community associations. At the same time, working with related industry groups, the VALAC was able to develop compromise legislation that is well-reasoned and avoid highly unfavorable legislation.

With the number of carry-over measures, the VALAC anticipates a full agenda of activity in preparation for the 2007 Session. The VALAC invites your comments and participation in the development and monitoring of legislation. You can obtain up-to-date information from the VALAC website, [www.cai-valac.org](http://www.cai-valac.org), or on the WMCCAI website, [www.caidc.org](http://www.caidc.org). ☐



Thomas Freeley, AMS was General Manager of Lake Ridge Parks and Recreation Association, Inc, the community association serving the large-scale community of 7600 homes located in Woodbridge, Virginia. He recently left Lake Ridge to open his own real estate and community management firm, Value Properties in Warrenton, Virginia. Tom serves as Chair of CAI's Virginia Legislative Action Committee (VALAC).



Pia Trigiani is a partner, resident in the Tysons Corner office of Troutman Sanders LLP. She is a member of and is a registered lobbyist for VALAC. She is past president of CAI's Washington Metropolitan Chapter. She chairs National CAI's Government and Public Affairs Committee and was recently elected to the Board of Directors for the Foundation for Community Association Research.

## Raising Association Registration Fees?

By Thomas Freeley, AMS

That might be right. In response to the REB Study conducted last year directed by House Joint Resolution 686 (2005 Session), the Virginia Real Estate Board (REB) has filed a Notice of Regulatory Action (NOIRA) to amend its Common Interest Community Management Information Fund regulations in regards to restructuring of Virginia community association registration fees to be proportionate to the size of the community.

What does that mean? Simply put, the REB is concerned that a five unit community association is paying the same \$25 annual registration fee that a 5,000 unit community association pays.

They state "Failure to revise fees to increase funding would result in a decline in the effectiveness of the Community Association Liaison's position as well as an increase in problems and misunderstandings with those who are directing the associations. No viable alternatives could be determined." The Community Association Liaison is an employee of the Department of Professional & Occupational Regulation (DPOR) that acts as DPOR's information source on issues relating to common interest communities.

The REB further states that the "...increase in funding would be used to either hire additional staff to assist the Community Association Liaison or engage a third-party firm to provide the much needed training/education to associations..."

What are they proposing? Well, we don't exactly know yet other than intent to restructure the fee schedule. There hasn't been a formal proposal presented. BUT, that's where you come in. The REB has provided an opportunity for input from the general public (that would be you and me) on how we feel about an increase in our Virginia community association registration fee from its current level of \$25 annually for all communities to likely some type of sliding scale registration fee, along with input on other related regulation questions.

We believe that it is in the best interest of our industry to provide our requested comments and, as the industry leader in common interest education, offer CAI's services to be involved in the referenced need for additional education.

**YOU MAKE THE CALL!** The REB has asked for your comments, which can be made online at <http://www.townhall.virginia.gov/Forum/OpenForums.cfm>.

Comments can also be forwarded by mail, email, or fax to Thomas Perry, Property Registration Administrator at 3600 W. Broad Street Richmond, VA 23230, [propreg@dpor.state.va.us](mailto:propreg@dpor.state.va.us), fax 804.367.2475 or phone at 804.367.2475. I encourage everyone to review this information and provide your comments to DPOR. Please keep checking the Virginia LAC web site (<http://cai-valac.org>) for updated information. ☐



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