

# June 2017

## *Community Associations Newsletter*

### **VIRGINIA LEGISLATIVE UPDATE**

By: Todd A. Sinkins, Esq. and Kelly C. Zook, Esq.

**D**uring its 2017 legislative session, the General Assembly approved a number of Bills that the Governor signed into law creating changes to the Property Owners' Association Act ("POAA") and the Condominium Act. The legislation addressed in this newsletter will take effect on July 1, 2017.

#### Amendments to the Declaration:

House Bill 1554 amends the POAA and confirms the original statutory intent to permit associations to amend their declaration under the POAA when the documents are silent. House Bill 1554 was passed in response to the Virginia Supreme Court decision in Tvardek v. Powhatan Village Homeowners Association, Inc. which called into question whether §55-515.1 (D) only applied to amendments when the declaration itself was silent. The new law confirms that, except as otherwise provided in the declaration, an association can amend its declaration by a two-thirds (2/3rds) vote of the owners.

#### Real Estate Signs/Power of Attorney:

House Bill 2274 amends the POAA and House Bill 2045 amends the Condominium Act to restrict an association's ability to regulate real states signs and also restricts an association's ability to require an owner to sign a formal power of attorney if the owner designates a person licensed under the provisions of §54.1-2106.1 as the owners' authorized representative.

Specifically, the Bills provide that unless expressly authorized in the POAA /Condominium Act or in the declaration/condominium documents, an association cannot require the use of any for sale sign that is (i) an association sign or (2) a real estate sign that does not comply with the requirements of the Real Estate Board.

However, the Bills provide that an association can prohibit the placement of signs on common areas or common elements. In addition, associations can establish reasonable rules and regulations that regulate:

- the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted;
- the geographical location of real state signs on real property on which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real state signs complies with the requirements of the Virginia Real Estate Board;
- the manner in which real estate signs are affixed to real property;
- the period of time after settlement when real estate signs on such real property shall be removed.

If an association currently requires the use of an association real estate sign, the association will need to ensure that the association's declaration or condominium instruments (as applicable) expressly authorizes the use of an association sign. If not expressly authorized, the association will need to halt use of the association real estate signs.

The Bills further provide that unless expressly authorized in the POAA or Condominium Act or in the declaration or recorded condominium instruments, an association cannot require an owner to execute a formal power of attorney if the owner designates a person licensed under the provisions of §54.1-2016.1 as the owner's authorized representative. The Bills require the association to recognize such authorized representation without a formal power of attorney, provided that the association is given a written authorization signed by the owner designating such representation.

#### Monetary Penalty for Failure to Provide Resale Certificate:

In addition to the amendments set forth above, House Bill 2274 amends the POAA and House Bill 2045 amends the Condominium Act to authorize the Common Interest Community Board to assess a monetary penalty against an association or common interest community manager for failure to deliver the resale certificate within 14 days. The Common Interest Community Board can also issue a cease and desist order for failure to deliver the resale certificate within 14 days pursuant to §54.1-2349 or §54.1-2352, as applicable.

Common Interest Community Board Resale Disclosure Packet Form:

The Common Interest Community Board is required to disseminate a one-page form to accompany association disclosure packets. House Bill 1475 now requires the Common Interest Community Board to include on the one-page form a statement that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law.

Complaint for Failure to Deliver Resale Certificate or Disclosure Packet:

House Bill 2045 now allows any person aggrieved by an association's failure to deliver a resale certificate or disclosure packet to file a complaint with the Common Interest Community Board. A realtor or another citizen who claims to have been aggrieved are now permitted to file such a complaint, in addition to the seller or potential purchaser.

If you have any questions regarding the 2017 legislative changes, please do not hesitate to contact one of our Rees Broome community association attorneys.