

2019 VIRGINIA GENERAL ASSEMBLY REPORT COMMON INTEREST COMMUNITY LEGISLATION

by

Lucia Anna Trigiani*
Tiago Duncan Bezerra**
MercerTrigiani

Introduction

The 2019 Session of the Virginia General Assembly convened on January 9, 2019 and adjourned on February 23, 2019. This was a “short session” of the General Assembly extended one day to allow for final action on the budget bill. The reconvened session (more commonly referred to as the *veto session*) was held on April 3, 2019.

General Assembly members considered 3,128 bills and resolutions introduced during the 2019 Session, plus an additional 206 bills that were continued from the 2018 session – for a total of 3,334 bills. On behalf of Virginia Legislative Action Committee of Community Associations Institute (“VALAC”), we monitored over 75 bills that directly or indirectly could impact common interest communities. Of those bills, the VALAC actively lobbied 20 bills.

This session the Governor recommended amendments to a number of bills, including changes to the budget bill. The Governor vetoed a total of 34 bills. All of the Governor’s vetoes were sustained with exception to proposed spot amendments to select bills.

Legislation of interest to community associations concerned a variety of topics, including reserves, home-based businesses, stormwater management and resale disclosure. Overall, VALAC’s efforts were hugely successful, having worked hard well in advance of the legislative session with active legislators interested in community association legislation and through direct participation in the work of the Common Interest Community Association Work Group of the Virginia Housing Commission. The following report reviews legislation that passed and becomes effective July 1, 2019.

Passed Legislation

Reserves – The reserves bills (**House Bill 2030 & Senate Bill 1538**) were one of at least two sets of proposed legislation that VALAC was involved in advance of the General Assembly convened in January. The legislation, which amended of the Virginia Condominium Act, Virginia Property Owners’ Association Act, and Virginia Real Estate Cooperative Act, requires community associations to make annual budgets (or budget summaries) available to association members before the beginning of any fiscal year.

In addition, any association that has a reserve study that indicates a need to budget for reserves is now required to include a statement in the association budget identifying (1) the amount of reserves recommended in the study and (2) the amount of cash currently in hand for

replacement reserves. In other words, association budgets must show specifically whether the association is budgeting and saving enough to meet the recommendations of the reserve study associations are required to conduct at least once every five years.

In addition, an enactment clause added to the bill requires the Common Interest Community Board to develop guidelines for reserve studies, including a list of capital components. The Common Interest Community Board has formed a committee of reserve experts – including engineers, accountants and management, as well as owners – to assist in developing the guidelines.

Home-Based Businesses – For at least the third year in a row, legislation (**House Bill 1853 & Senate Bill 1537**) was introduced to restrict the authority of property owners associations to regulate home-based businesses, specifically home-based child care services. These parallel bills provide that home-based child care services are considered *residential use* if applicable zoning ordinances consider home-based child care services an accessory or ancillary residential use. However, the bills provide that a home-based child care service is not a residential use if home-based child care services are expressly (i) prohibited or restricted in the declaration or (ii) restricted in the association bylaws or association rules.

Stormwater Management – Two related bills (**House Bill 2019** and **Senate Bill 1756**) have been approved by the Governor of Virginia to address stormwater management facilities.

House Bill 2019 requires the Common Interest Community Board to amend the association disclosure packet notice and resale certificate notice to include information regarding whether assessments paid to the community association may be used to construct or maintain stormwater management facilities.

Under **Senate Bill 1756**, common interest community developers are now required to provide information to the board of directors at developer transition relating to the existence of any stormwater management facility under the control of the association. The information developers are required to provide includes a final site plan or construction drawings showing the facilities along with copies of all applicable recorded easements or maintenance agreements. This legislation was considered by the Common Interest Community Work Group of the Virginia Housing Commission.

A third piece of legislation (**House Bill 1614** and **Senate Bill 1248**, the same legislation – but two bills) provides localities with authority to appropriate money for the purpose of awarding funds to owners of private property or common interest communities for stormwater management and erosion prevention.

Resale Disclosure – As has become an annual tradition, the General Assembly adopted further legislation (**House Bill 2385** and **Senate Bill 1580**) relating to property owners' association and condominium resale disclosures. These companion bills seek to clarify that the purchaser's right to cancel a real estate contract for the purchase of a property in a common interest community may be exercised within three days of receiving an association disclosure packet or resale certificate that does not contain all information required under the relevant provisions of the Property Owners' Association Act and Condominium Act.

This legislation was proposed in response to a Fairfax County Circuit Court lawsuit between a buyer and seller of a lot in a property owners association where the buyer sought to exercise the right to cancel the contract after the three-day cancellation period expired on the basis that the disclosure packet provided to the buyer did not contain all information required under the Virginia Property Owners' Association Act. The court determined that the three-day cancellation period ran from receipt of the resale disclosure packet, even though the packet was incomplete.

Proxy Voting (Condominium Act) – House Bill 2647 amends a provision of the Condominium Act relating to voting by proxy. Under current law, proxies are void unless signed by a unit owner or any person having the authority to execute deeds on behalf of the unit owner. In other words, all persons who hold title to the unit must sign the proxy form for the proxy to be effective. After July 1st when the legislation becomes effective, if a unit is owned by more than one person, a proxy may be signed by *any of the unit owners*. The proxy may likewise be revoked upon the objection of one of the unit owners prior to or at the meeting.

Email Notice (Property Owners' Association Act) – A helpful amendment to property owners associations, the General Assembly adopted legislation (House Bill 2694) that permits property owners association to deliver notice of member annual or special meetings by email. While providing for potential cost savings to property owners associations, the use of email notice is only permitted where lot owners elect to receive notices electronically. In addition, if the email notice is returned undeliverable, the association must send the notice by United States mail.

Recodification of Title 55 of Virginia Code – The General Assembly adopted legislation implementing recodification of Title 55 of the Code of Virginia recommended by the Virginia Code Commission (Senate Bill 1080). Title 55 contains most of the statutes affecting common interest communities, including the Condominium Act, Property Owners' Association Act, and the Virginia Real Estate Cooperative. The restatement of Title 55 organizes the laws more logically, removes obsolete and duplicative language, and improves the structure and clarity of the statutes. Effective October 1, 2019, all of the statutes in what will be Title 55.1 will be reorganized and renumbered. It's time to start memorizing those new statute citations!

Session Observations

As identified above, the 2019 session produced legislation helpful to community associations. This successful legislation is but half the story, however. The other half of the story are the failed bills, which sought to (i) eliminate the licensing requirement of common interest community managers, (ii) make violations of the Condominium Act a criminal misdemeanor punishable by up to six months of jail time and up to \$50,000 in fines, and (iii) require condominium unit owners' association boards of directors to establish a method to allow political candidates unfettered access to the condominium property for campaigning.

Long hours of work – discussion with stakeholders and talking with legislators to support or argue against measures – that contributed to successes that may not be readily apparent. The 2019 session required considerable effort from a committed cadre of volunteers working with well-regarded and effective legislative representatives – before and during the session. The

legislation addressing reserves, stormwater and family day homes were the by-product of participation in the work of the Virginia Housing Commission and working with legislators intent on seeing changes in these important areas of community association operations and governance.

It is expected and anticipated that the unsuccessful measures may find their way back and that other attempts to curtail and burden community associations will be introduced. This year, 2019, is an election year when all 140 seats in the General Assembly are up for election. You are invited and encourage to join the cause – by participation in the Chapter legislative committee, by joining and contributing to the Legislative Action Committee and the Virginia Political Action Committee.

**Pia Trigiani is a partner with MercerTrigiani, a charter member of the College of Community Association Lawyers, and past president of the Washington Metropolitan Chapter of CAI. She remains active on legislative matters, coordinating the lobbying effort on behalf of the Virginia Legislative Action Committee. She has chaired the Virginia Common Interest Community Board since the Board was established in 2008.*

***Tiago Bezerra is an associate with MercerTrigiani and is a member of the Virginia Legislative Committee of the Washington Metropolitan Chapter of CAI. He has also contributed to WMCCAI's monthly Quorum magazine and has been a speaker in multiple programs, including most recently at the WMCCAI Conference & Expo in February 2019.*

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