



2021 Legislative Changes *that Impact Virginia Community Associations*

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In the midst of the COVID-19 crisis, the Virginia General Assembly had a busy 2021 session that consisted of a regular session and a subsequent special session during which it passed many different pieces of legislation that will affect community associations. The CAI Virginia Legislative Action Committee (VALAC) kept a close eye on the happenings before the General Assembly and advocated on behalf of community associations.

VALAC monitored approximately 40 bills that were filed and advocated for or against many of them to legislators. As many of these new laws will impact the powers and governance of community associations, it is important to understand these changes and seek legal advice about the new legislation. While there were many changes with the potential to affect community associations, below is a summary of the highlights.



Virtual Meetings - House Bill 1816 and Senate Bill 1183

Under prior law, association board meetings could not be fully virtual—at least two members had to be physically present at the meeting place stated in the notice. At the beginning of the COVID-19 crisis, the General Assembly passed legislation temporarily allowing for board meetings to be held entirely virtually during declared states of emergency. In the 2021 session, the General Assembly made this temporary change permanent for board meetings and passed legislation expanding this to also allow for committee and member meetings to meet virtually if the board has passed guidelines allowing for electronic meetings. With the ending of the current State of Emergency on June 30, 2021, these changes will be welcome.

Under the new law, any meeting of an association, board or committee may be held in part or in full electronically as long as the board has adopted guidelines for electronic means at the meetings. Importantly, the definition of electronic means has been expanded to include a “meeting conducted via teleconference, videoconference, Internet exchange or other electronic means.” The guidelines have to ensure that those accessing the meeting are allowed to be there and that people who are entitled to take part in the meetings are able to do so. For board meetings, there is no longer a requirement to have at least two board members physically at the meeting place.

Under prior law, there was no express provision in either the Condominium Act or the Property Owners’ Association Act authorizing virtual member meetings. While an incorporated association may have authority in the Nonstock Act to meet by remote participation, unincorporated associations had no clear option. The new laws expressly authorize association meetings to be held entirely or partially by electronic means.

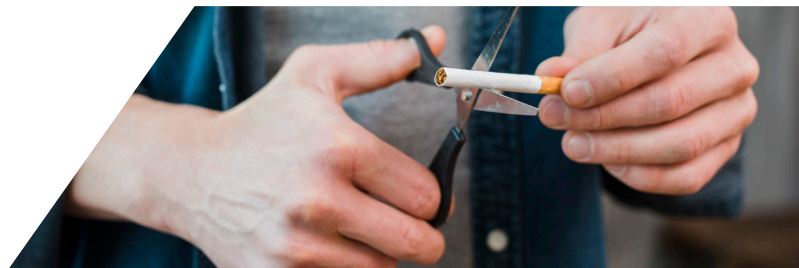
Keep in mind that not all associations may be able to meet virtually even with this new law. While this issue is being debated in the legal community and may ultimately have to be resolved by a court ruling or further action by the General Assembly, associations that are Virginia nonstock corporations may not be able to hold member meetings entirely virtually if the governing documents require the meeting to be at a place. Incorporated associations that want the ability to meet entirely virtually should pay close attention to the details of the new legislation and work with

counsel to review and revise their documents to facilitate such electronic meetings.

Further, and not entirely new, the association must ensure that it provides a reasonable, non-electronic alternative to a person who wants to attend association, board or committee meetings but does not want to participate virtually or lacks the capability to do so.

Under the new laws, members will be able to vote in person, by proxy or by absentee ballot unless the association’s documents explicitly prohibit such voting. Proxies can be cumbersome and require the proxy holder to be present to vote. Use of absentee ballots is a welcome addition or alternative. Voting may occur electronically if the board has adopted guidelines for doing so. Members who vote by proxy or absentee ballot are deemed present at the meeting all purposes, including for purposes of quorum. Moreover, the electronic voting must ensure that voters’ identities are protected if a secret ballot is required.

Amends: Va. Code §§ 55.1-1800, 55.1-1815, 55.1-1816, and 55.1-1832 (Virginia Property Owners’ Association Act); and 55.1-1900, 55.1-1935, 55.1-1949, 55.1-1952 and 55.1-1953 (Virginia Condominium Act)



Smoking Restrictions - House Bill 1842

The General Assembly passed legislation greatly expanding the ability of associations to restrict smoking in their communities by rule. For property owners’ associations, associations can now not only ban smoking in common areas, but in attached dwelling units by rule. Condominium associations have even broader powers and can restrict smoking not only in common elements, but in dwelling units, whether or not attached by rule.

To reiterate, this change enables smoking restrictions not only in common areas/elements in associations but also within individual units in condominium associations and attached dwelling units in property owners’ associations. Associations should evaluate whether to adopt/amend rules to include such restrictions.

The statute does not define “smoking” or limit it to tobacco. It is not specified whether the statute is broad enough to include pipes, cigars, and (now legalized in Virginia) marijuana smoking. It is also unclear whether it

includes vaping. It is anticipated these issues, and others, will have to be resolved via court ruling or further action by the General Assembly.

Amends the Code by adding Va. Code §§ 55.1-1819.1 (Virginia Property Owners' Association Act); and 55.1-1960.1 (Condominium Act)



Parking Accommodation Requests - House Bill 1971

The General Assembly passed legislation requiring a community association to treat a request for accessible parking as a request for a reasonable accommodation, even if the request would require a physical alteration to the premises such as installing a curb cut or restriping. As the request for parking will be a considered an accommodation as opposed to a modification, the association is required to pay for expenses associated with modifying a parking area so that it can be used for parking. Of course, the request must be reasonable and not impose an undue financial or administrative burden or cause a fundamental alteration to the association's operations.

Amends: Va. Code § 36-96.3:2 (Virginia Fair Housing Law)



Changes to Time to Enforce or Take Action on a Judgment - House Bill 2099

Those involved in collections should pay close attention to House Bill 2099 recently passed and signed into law. Under prior law, creditors could execute and take action on a judgment for twenty years after the date of judgment and had the ability to extend this period for subsequent periods of 20 years. The judgment enforcement period is unchanged for judgments ordered or domesticated before July 1, 2021. However, under the new law, judgments entered on or after July 1, 2021, have the enforcement period cut in half. Judgments obtained on and after July

1, 2021, can be enforced for ten years. This period can be extended up to two times by recording a certificate in the clerk's office that extends the judgment lien for additional period of ten years. Associations and those involved in the collections process should examine their systems to determine whether procedures should be put in place to accommodate this change.

Amends: Va. Code § 8.01-251 (Limitations on enforcement of judgments)



Marijuana Legalization - Senate Bill 1406 and House Bill 2312

In perhaps the most publicized legislative action in the last session, the General Assembly legalized marijuana for personal use in Virginia. People 21 years of age and older may now legally possess up to one ounce of marijuana under Virginia law and may cultivate up to four marijuana plants for personal use in their residence. No household may have more than four plants. Marijuana plants cannot be visible from the public right of way and must have a legible tag that includes the owner's name, driver's license or identification number and a notation that the marijuana plant is being grown for personal use. While Virginia is relaxing its laws on marijuana, it is important to keep in mind that marijuana remains illegal under federal law.

Amends: Va. Code §§ 4.1-1100; 4.1-1101 and many other Code sections.



Expansion of the Court of Appeals Jurisdiction - Senate Bill 1261

In a significant change to Virginia appellate procedure, the General Assembly passed a law expanding the jurisdiction of the Court of Appeals effective January 1, 2022. Under prior law, civil cases in circuit court could be appealed to the Supreme Court of Virginia only by petitioning to the

Supreme Court asking a three-justice writ panel to grant the appeal before the full seven-justice Court would hear the case. As the majority of cases were denied at the writ stage, many civil cases end without a full appeal of a circuit court ruling. Domestic relations, workers compensation, and most criminal cases were appealed to the Court of Appeals of Virginia, an intermediate appellate court. While domestic relations and workers compensation appellants had an appeal of right to the Court of Appeals, criminal appellants had to petition the Court of Appeals to have their appeals heard. Litigants could petition the Supreme Court to review rulings of the Court of Appeals. Accordingly, many cases involving community associations, which typically are civil in nature, have been resolved at the circuit court level without a ruling by an appellate court.

The new law expands the jurisdiction of the Court of Appeals so that most civil litigants and criminal defendants will have a right to a full appeal. As before, litigants will be able to petition the Supreme Court to hear cases decided by the Court of Appeals. As there will be a right of appeal to the Court of Appeals for civil cases, community associations involved in litigation are more likely to be involved in a full appeal of trial court rulings.

This change will have both positive and negative effects on community associations. The cost of litigation may increase as cases that were previously resolved at the circuit court level, including those in which community associations prevailed, are more likely to have full appeals. However, community associations that do not prevail at the trial court level will also have the opportunity to have an appellate court review in full the trial court ruling.

Amends: Va. Code §§ 8.01-670, 17.1-405, 17.1-406 and many other Code sections.

Every General Assembly session involves issues affecting community associations. Associations and stakeholders should be mindful of these changes, consult counsel, and consider revisions/additions to documents, policies, and procedures.

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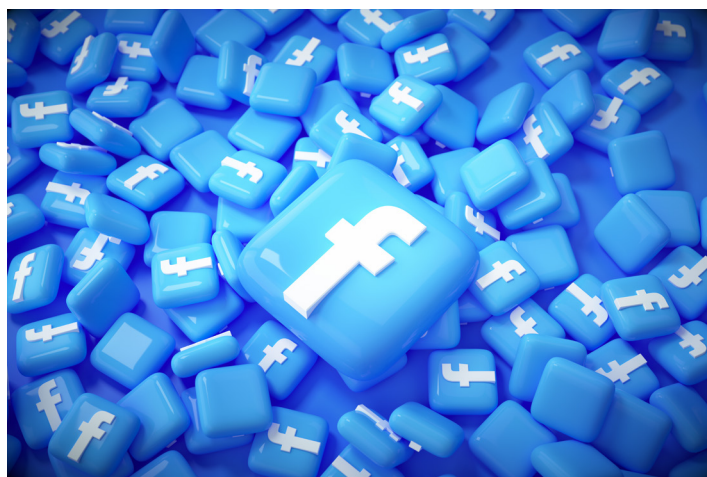
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