

MERCERTRIGIANI

STATUTORY SUMMARY OF LEASING RESTRICTIONS

In recent years, courts and the legislature in Virginia have increasingly followed the view that association action must be based *only* on authority established in the recorded governing documents or condominium instruments or by statute, particularly if action being taken affects ownership rights such as the right to lease property. Therefore, restrictions on leasing units in a condominium or homes in a community governed by a property owners' association must be based on authority in the condominium instruments, the recorded governing documents, or statute.

In 2015, the Virginia General Assembly created substantial new requirements on leasing with the adoption of then-new Section 55-79.87:1 in the Virginia Condominium Act ("Condominium Act") and Section 55-509.3:1 of the Virginia Property Owners' Association Act ("POA Act"). Refinements were made to those statutory provisions effective July 1, 2016. The statutes, now recodified in Section 55.1-1973 of the Condominium Act and Section 55.1-1806 of the POA Act, now provide that **unless expressly authorized** by statute or the recorded governing documents, **the association may not:**

- Condition or prohibit the rental or make an assessment or impose a charge, except as provided in Section 55.1-1904 of the Condominium Act or Section 55.1-1806 of the POA Act;
 - Section 55.1-1904 of the Condominium Act limits the charges that may be imposed by a condominium unit owners association to those charges authorized in the Condominium Act or to fees for services provided; and
 - Section 55.1-1806 of the POA Act limits charges that may be imposed by a property owners' association to those charges authorized in the POA Act or to fees for services provided.
- Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during the term of any lease;
- Charge an annual or monthly rental fee or any other fee not expressly authorized in Section 55.1-1904 of the Condominium Act or Section 55.1-1806 of the POA Act;
- Require the owner to use a lease or a lease addendum prepared by the association;
- Charge any deposit from the owner or the tenant of the owner; or
- Have the authority to evict a tenant of any owner or to require any owner to execute a power of attorney authorizing the association to so evict.

Section 55.1-1973.B of the Condominium Act and Section 55.1-1806.B of the POA Act, however, authorize an association to require that the owner provide the association with the names and contact information of the tenants and authorized occupants under the lease, as well as vehicle information for such persons. Additionally, the association may require the owner to provide the association with an acknowledgement by the tenant that the tenant has received and agrees to abide by the governing documents and association rules and regulations.

As the statutes provide, associations may adopt leasing rules and regulations *only if* the rules and regulations are consistent with and based upon *express authority* in the condominium instruments or recorded governing documents. Leasing rules and regulations which are not expressly authorized by the condominium instruments or recorded governing documents may be subject to legal challenge.