

COMMON INTEREST COMMUNITIES
EDUCATION SERIES:
LEGAL & LEGISLATIVE UPDATE



September 25, 2021

MERCERTRIGIANI



LEGAL AND LEGISLATIVE UPDATE

- **2021 GENERAL ASSEMBLY SESSION**
- **CASE LAW DEVELOPMENTS**
- **COMMON INTEREST COMMUNITY
BOARD ACTIONS**
- **OMBUDSMAN DETERMINATIONS**



2021 GENERAL ASSEMBLY

MERCERTRIGIANI



Virginia General Assembly

- Oldest continuing legislative body
- 140 Legislators
 - House of Delegates - 100 Members
 - Senate – 40 Members



2021 General Assembly

- Short Session – 30 days
 - Convened – January 13, 2021
 - Adjourned – ***Sine Die*** – February 8, 2021
- *Special Session* – 15 days
 - Convened – February 10, 2021
 - Adjourned – ***Sine Die*** – March 1, 2021
- Veto Session – April 7, 2021
- **Legislation effective – July 1, 2021**



2021 General Assembly

- COVID Precautions
 - House – met *entirely* virtually
 - Senate – met in-person at the Science Museum of Virginia (physically distanced)
- All testimony from stakeholder representatives – *virtual*
- Bill limits
 - House – 7 bills per Delegate
 - Senate – 12 bills per Senator



2021 General Assembly

- **1,033** Bills *Introduced*
- **934** Bills *Passed*
- **99** Bills *Failed*
- **GOVERNOR VETOED *NO* BILLS**



Legislation of Interest

- Death Penalty Abolished
- Marijuana
- General District Court Jurisdictional Limits
- Court of Appeals Expansion
- Landlord-Tenant – Eviction
- Diversity
- Censure
- Secretary of Labor
- IOLTA
- Electronic Notarial Certificate
- Alcohol
- Minimum Wage
- COVID-19
- Elections



Common Interest Community Bills

- **40** Bills Monitored by VALAC
- **3** Bills Amending Condominium Act
- **3** Bills Amending Property Owners' Association Act
- **3** Bills Amending Virginia Fair Housing Law
- **No CHANGES TO RESALE DISCLOSURE!**



Virtual Meetings – *Boards & Committees*

House Bill 1816 & Senate Bill 1183

- Permits Board and committee meetings to be held partially or entirely by electronic means.
- Guidelines must be adopted that ensure:
 - Attendees are authorized to attend.
 - Attendees entitled to participate have the opportunity to participate.



Virtual Meetings – ***Membership Meetings***

House Bill 1816 & Senate Bill 1183

- Permits membership meetings to be held partially or entirely by electronic means.
- Guidelines must be adopted that ensure:
 - Attendees are authorized to attend.
 - Attendees entitled to participate have the opportunity to participate.



Voting

House Bill 1816 & Senate Bill 1183

- Unless prohibited by governing documents:
 - Allows member voting by absentee ballot.
 - Allows member electronic voting.
- Guidelines must be adopted for electronic voting – including protecting the secrecy of votes if governing documents require secret balloting.



Smoking

House Bill 1842

- New Section added to Condominium Act and Property Owners' Association Act.
- **Confirms** authority to restrict smoking on common area and common elements.
- **Establishes** authority to restrict smoking:
 - Within condominium units.
 - Within lots in communities consisting of attached dwellings (i.e., townhouses).



Rulemaking

House Bill 1842

- Incorporates rulemaking authority into Condominium Act substantially similar to Property Owners' Association Act.
- Rules and regulations **must be** published and distributed to members.
- Members **may repeal** a rule or regulation by a majority vote of those *actually voting* at a membership meeting.



Fair Housing – Accessible Parking

House Bill 1971

- Requests for accessible parking to accommodate a disability shall be treated as a request for ***reasonable accommodation***.
- Background
 - *Windsor Plaza* case.
 - HUD Joint Statement.
- Impact: Housing providers responsible for costs – unless an *undue financial burden*.



Fair Housing – Protected Classes

House Bill 2161 & Senate Bill 1410

Re-defines protected class in Virginia Fair Housing Law related to ***military status***:

- Active military
- Military spouse
- Veterans



Assessment Collection – Judgment Enforcement

House Bill 2099

- Reduces from **20** years to **10** years from the date a judgment may be enforced.
- Enforcement period may be extended up to two times (10 years each) by recordation of a certificate prior to enforcement expiration.
- Delayed effective date: ***January 1, 2022.***



Assessment Collection – Judicial Foreclosure

House Bill 2175

- Limits judicial foreclosure of ***judgment liens***.
- If seeking enforcement against *principle residence*, the judgment amount must be greater than \$25,000.
- Does ***not*** limit enforcement of assessment liens.



Dangerous Dogs

Senate Bill 1135

- Amends entirely the process for adjudicating a dog as a *dangerous dog* under Virginia law.
- Owners may keep *dangerous dogs* subject to various conditions.
- ***But***, recorded covenants control:
 - Restrictions against dangerous dogs in community.
 - Architectural control over fence construction.



Solar Panels

Senate Bill 1135

- Recodification of Title 67 of the Code of Virginia
- Solar panel statutes moved:
 - Section 55.1-1820.1 of the Virginia Property Owners' Association Act
 - Section 55.1-1951.1 of the Virginia Condominium Act
- Delayed effective date: **October 1, 2021.**



What Did We Learn in 2021?

- Preparation is *essential*.
- Relationships are *important*.
- The governing documents and respect for private contract rights are our *best* argument.
- We need to be *nimble* and *flexible*, but *firm* when we must.
- Take action only with authority – do not push the limits of authority.



Advocacy

- Community association voices need to be heard
- Build and strengthen relationships.
- Identify and develop allies.
- Promote and sustain positive image.
- Legislative Changes:
 - Impact on governance and administration.
 - Impose new or additional requirements.
 - Affect association expenses.



CASE LAW DEVELOPMENTS



CASE LAW DEVELOPMENTS

- ***Norman v. Foxchase Owners' Ass'n***
 - Charlottesville Circuit Court
 - COVID-19 waiver & common area rulemaking authority
- ***Sun v. Braddock Place Townhouses Ass'n***
 - Eastern District of Virginia
 - Parking & discrimination (Contract Discrimination)
 - Disclosure Packet – a contract?



COMMON INTEREST COMMUNITY BOARD ACTIONS



Regulatory Action

- Regulatory Waivers
 - All licenses, certifications and registrations remain valid for up to thirty days after the state of emergency is lifted
 - *EXEMPTION EXPIRED JULY 31, 2021*
- Guidance documents revised to reflect statutory changes resulting from Recodification of Title 55 - Title 55.1
- ***Looking Ahead*** – Regulatory Review



OMBUDSMAN DETERMINATIONS



2019-2020 Annual Ombudsman Report

Complaint Statistics

190 Complaints

- **47%** - property owners associations
- **25%** - condominium unit owners' associations
- **27%** - timeshares



2019-2020 Determinations

- **35** Notices of Adverse Decision Filed
- Complaints address various issues:
 - Notice of Meetings – 32%
 - Books & Records – 18%
 - Method of Communication – 13%
 - Executive Session – 11%
 - Agenda Packets – 8%
 - Work Sessions/Informal Meetings – 5%
 - Reserve Study – 3%
 - Disclosure Packet/Resale Certificate – 3%
 - Association Charges – 3%
 - Pesticide Application – 3%



2019-2020 Ombudsman Determinations

- **Meetings** – **UOA of Hiddenbrooke Condominium – 2020-01513**. Board met several times without providing notice of meetings to members and used executive session for an improper purpose (e.g., appointing member to fill vacancy). Result – Do better next time! (Condominium Act).
- **Books & Records** – **Cameron Station Community Ass'n – 2020-02705**. Association did not respond or provide books and records in accordance with statutory timeframes. (Section 55.1-1815 of the Property Owners' Association Act).



2019-2020 Ombudsman Determinations

- **Good Standing** – **Greenfield Crossing Homeowners Ass’n – 2020-01667**. Section 55.1-1807 of the Property Owners’ Association Act only addresses rights of owners *in good standing*. The Ombudsman refused to imply from the statute that owners *not* in good standing do not have voting rights – the governing documents control.
- **Method of Communication** – **Three Ships Landing Condominium Ass’n – 2020-01334**. Providing a Facebook page and community bulletin boards provides methods of communication required under Section 55.1-1950 of the Condominium Act; but cautioned against relying solely on Facebook.



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