

## 2015 End of Session Report

The CAI Virginia Legislative Action Committee (VALAC) enjoyed a large degree of success in the General Assembly this year. Our lobbyists from the Lindl Corporation, Chuck Duvall, Tripp Perrin and Denny Gallagher, worked non-stop for us. Doors were opened, legislators listened, and we are pleased with the new relationships we established. Not only did we establish excellent relationships with legislators, we also received the support of the Virginia Association of Community Managers and the Virginia Association of Realtors on HB 791. Our successes were found on both the House and Senate side. Below are highlights and outcomes of legislation that addressed community associations and the VALAC's efforts during the 2014 General Assembly.

### **Late Fees – HB 566**

The VALAC worked with Delegate Watts to clarify the late fees that can be charged on assessments. HB 566 was signed by Governor McAuliffe on March 17, 2014. It amends the Virginia Condominium Act and the Property Owners' Association Act (the "POAA") providing: Except to the extent that the condominium instruments or rules or regulations promulgated pursuant thereto provide otherwise, an executive organ may impose a late fee, not to exceed the penalty provided in § 58.1-3915, for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.

### **Compliance with Declaration – HB 530**

Delegate Pogge submitted changes to the Virginia Condominium Act to clarify a unit owner's right to file a lawsuit against the unit owners' association. The VALAC was concerned about the proposed language and provided substitute language to Delegate Pogge on HB 530 which she agreed to use. HB 530 amends Va. Code Ann. 55-79.53 A. by adding the following language: This section shall not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

### **Merger; Judicial Reformation of Declaration – HB 690**

HB 690, providing for the merger of condominiums and judicial reformation of declarations, was introduced by Delegate Massie. The VALAC reached out to Delegate Massie on the bill to provide substitute language and worked with other stakeholders on the substitute bill. HB 690 amends the Virginia Condominium Act by providing condominiums with the ability to merge two or more condominiums. It also amends both the Condominium Act and the POAA by permitting associations to petition the circuit court to make changes to a declaration. A process is set forth in the statute and it can only be used in the following limited circumstances: (i) ambiguities or inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

### **Notice for Requests to Examine Records – HB 550v**

The VALAC worked with Delegate Filler-Corn on HB 550 which increased the time for self-managed associations to respond to document requests from owners. We provided some technical amendments to the bill to keep it consistent with defined terms used elsewhere in the Virginia Code. HB 550 has been signed by the Governor and is effective July 1, 2014.

### **Rescission of Condominium Purchase Agreement – HB 899**

HB 899 was introduced by Delegate Peace. It sought to reduce a purchaser's right of cancellation on a condominium contract from 10 calendar days to 5 calendar days. The VALAC lobbied to limit the reduction to 7 days but were unable to get agreement. To provide a balance to the potential condominium buyer, we requested the addition of a requirement that the purchaser's right of cancellation be in bold, 12-point type on the first page of the contract. This change was accepted. HB 899 has been signed by Governor McAuliffe and is effective July 1, 2014.

### **Allowable Fees – HB 900**

HB 900 was another bill introduced by Delegate Peace. It added clarifications to the permitted charges for disclosure packets and resale certificates. The VALAC sought to have a few changes made to the bill. We were successful in removing language that permitted the bill for the disclosure packet or resale certificate to not be paid if the manager did not submit the invoice at the time of closing. HB 900 has been signed by the Governor and is effective July 1, 2014.

### **Solar Panels – SB 222**

Senator Petersen introduced SB 222 on solar panels. The original bill would have nullified those restrictions in declarations that prohibit solar panels. The modified language recognizes and clarifies the authority of the declaration in being able to prohibit solar panels. The measure passed both chambers and is heading to the Governor's desk.

### **Association Charges – HB 260**

HB 260 would have provided that unless expressly authorized in the Property Owners' Association Act or in the declaration or otherwise provided by law, no association may make an assessment or impose a charge against a tenant unless the charge is a fee for services provided or related to use of the common area. The measure was pulled by the patron and will not carry over to 2015.

### **Owners' Bill of Rights - HB 332**

HB 332 provides that in addition to other powers and duties, the Common Interest Community Ombudsman is required to develop and disseminate to all common interest communities in Virginia a common interest community owners' bill of rights, which shall be written in readily understandable language using words of common everyday usage and avoiding legal terms and phrases. The bill sets out the minimum requirements for inclusion in the bill of rights. The measure was carried over and referred to the Housing Commission.

### **Association Charges – SB 386**

SB 386 would have clarified that a property owners' association may only assess charges or fees for services provided or related to use of the common area that are expressly authorized in the Virginia

Property Owners' Association Act, the association's declaration, or as otherwise provided by law. The measure was pulled by the patron and will not carry over to 2015.

### **Rule Enforcement – HB 791**

Last, but certainly not least, is HB 791. HB 791 in its original form provided community and condominium associations with the ability to go to general district court on violations of the rules and regulations or declaration. The intent was to permit associations to use the more efficient and less costly general district court rather than circuit court which also benefits the owner in reducing any attorney fees they incur. Subsequently, many changes were discussed, some were made, then changed again. The VALAC picked up opposition to the bill which made its way to the "news" and unfortunately the misinformation and lack of understanding of the bill became an issue. The bill ended up going to "conference" which means three delegates and three senators were appointed to work out a compromise on the bill. The bill was modified again, the conferees agreed to it, and it passed both the House and the Senate. We are reviewing the bill to determine its impact on our constituencies. Stay tuned.

It was evident from the reports on the ground during the long haul towards the passage of HB 791 that while many members understand the value of community associations, there is a perception that community associations have become too powerful and the inclination to give them any additional power – real or otherwise – is minimal. Many factors have contributed to this feeling including many members with negative stories about their experience living in a community associations and at least a couple of members who have a law practice dedicated in part to filing lawsuits against community associations. The horror stories of the few vocal residents unfortunately dramatically outweigh the silent majority of homeowners who think favorably of community associations and their mission. These obstacles are not insurmountable but we are going to need to make a concerted and sustained effort at educating legislators and other policy makers about the valuable role community associations play and why the hysteria is unfounded.