



2017 End of Session Report

As expected, the 2017 session of the General Assembly was a busy one. The Community Associations Institute Virginia Legislative Action Committee ("VALAC"), through our lobbyists, followed more than 80 bills during the 2017 session, more closely monitoring and impacting 28 bills directly affecting community associations in Virginia.

These bills included legislation related to short-term rentals, home-based businesses (including licensed child day cares), declarant control, resale disclosure, board meetings, amendments and fair housing.

Throughout the session, VALAC members and other representatives met with legislators and other stakeholders, testified by committees in both the House of Delegates and Senate, served as a subject matter resources for legislators, and hosted a Community Association Day at the Capitol.

On behalf of VALAC, the following is our report on legislation considered during the 2017 session of the Virginia General Assembly. Unless vetoed, all of the measures that passed by the General Assembly will become effective July 1, 2017.

Short-Term Rentals – Senate Bill 1578, introduced by Senator Thomas "Tommy" Norment, authorizes a locality to adopt an ordinance requiring the registration of persons offering property for short-term rental. Senate Bill 1578 defines "short-term rental" as the provision of a room or space suitable for sleeping or lodging for less than 30 consecutive days.

Senate Bill 1578 also amends the Alcoholic Beverage Control Act to clarify that certain property rented on a short-term basis is considered a bed and breakfast establishment for purposes of ABC licensing and that the exception from ABC licensing for serving alcoholic beverages to guests in a residence does not apply if the guest is a short-term lessee of the residence.

VALAC-supported amendments to Senate Bill 1578 confirm that nothing in the bill should be construed to supersede or limit private contracts, including recorded governing documents or condominium instruments.

With the adoption of Senate Bill 1578, the authority to offer a lot or unit for rent on a short-term basis remains dependent on the locality and the specific provisions of an association governing documents or condominium instruments.

Amendments – Property Owners' Associations – House Bill 1554, introduced by Delegate David Bulova with the full support of VALAC, amends the Virginia Property Owners' Association Act provisions related to amendment to address concerns raised by the Virginia Supreme Court decision in

Tvardek v. Powhatan Village Homeowners' Association, clarifying the Act provisions apply only when a declaration is silent on amendment.

House Bill 1554, although it passed unanimously out of the House of Delegates, was met with significant opposition on the Senate floor. Ultimately, the bill passed the Senate 23-17 in a close vote and becomes effective July 1, 2017.

VALAC's input and efforts were critical to the passage of House Bill 1554. Members of VALAC participated in the drafting and revision of the bill, met with and garnered support of key stakeholders, including the Virginia Association of Realtors, testified before committees in both the House and Senate, and met individually with legislators in both chambers.

For-Sale Signs – Several similar bills (House Bills 2045 and 2274 and Senate Bills 1231 and 1255) were introduced providing that except as expressly authorized in governing documents or condominium instruments, no association may (1) require a specific sign provided by the association (at or a fee or for free), or (2) causes a violation of the Virginia Real Estate Board regulations.

The legislation also includes authority for associations to regulate signs on common area and address specific issues related to real estate signs through the adoption of rules.

Through VALAC's input and participation, House Bills 2045 and 2274 and Senate Bills 1231 and 1255 were heavily amended to reduce the impact, administrative burden and cost of the legislation and to establish additional rights to adopt rules and regulations related to real estate signs.

Association Disclosure Packet – Required One-Page Form – Delegate Robert Orrock introduced House Bill 1475 that requires the Common Interest Community Board to include in its current one-page form that accompanies association disclosure packets that are required to be provided to all prospective purchasers of lots located within a development that is subject to the Virginia Property Owners' Association Act that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law.

Amendments to House Bill 1475 reflect compromise language, with input from VALAC to ensure no additional costs would be incurred as part of the association disclosure process and the House Builders Association of Virginia.

Dam Safety – State Funding – Delegate Mark Cole introduced **House Bill 1562** allowing state funds to be dispersed in the form of grants to localities and private entities that own dams in order to protect public safety and welfare. The grants can be used for the design, repair, and the safety modifications of dams identified in safety reports.

Failed Bills

In addition to those bills that passed, several bills that failed to pass were followed very closely by VALAC. We expect that several of these failed bills will be introduced, in some form, in the 2018 session.

- **Home-Based Businesses & Child Care** – Senator Chap Petersen introduced Senate Bill 1096, legislation similar to a bill he introduced in 2016. VALAC opposed the bill and members testified against the bill in the Senate Committee on General Laws and Technology, where it failed.

Senate Bill 1096 provided that a lot owner who is a licensed child care provider (licensure is generally triggered when five or more children, in addition to those children who live in the home, are cared for) operating within his personal residence pursuant to state law and in compliance with local ordinances shall be considered an “accessory residential use” and may not be prohibited by a property owners' association unless child day cares are specifically prohibited by the declaration.

Had Senate Bill 1096 passed, property owners' associations that restrict home businesses based on a limitation that lots be used “for residential purposes only,” would no longer be permitted to restrict licensed child care providers. And, communities that prohibit “commercial use” could also no longer restrict licensed child care provider.

As the law stands currently, it is generally agreed that those child care providers with 4 or less children (in addition to those children that live in the home) may be considered an “accessory residential use” (depending on the locality and document provisions) and are typically permitted (unless the recorded documents address day cares specifically).

- **Resale Fees for Self-Managed Property Owners' Associations** – Delegate Vivian Watts introduced House Bill 2376, providing that a property owners' association that is not professionally managed may act as a professionally managed association only upon complying with specific conditions set out in the bill. House Bill 2376 was stricken in subcommittee, but has been referred to the Virginia Housing Commission for study. VALAC will continue to work with Delegate Watts on issues affecting community associations.
- **Fair Housing: Gender and Sexual Orientation** – Senate Bill 822 was introduced by Senator Wexton that would have added discrimination on the basis of an individual's sexual orientation or gender identity as an unlawful housing practice under the Virginia Fair Housing Act.
- **Service of Process** – Senator Wexton also introduced Senate Bill 823, that would have required an employee or agent of a common interest community with restricting access (i.e., a gate or key-controlled access doors) grant entry to a person attempting to serve process on a party who resides in, occupies, or is known to be present in the community. VALAC worked with Senator Wexton to ensure provisions were included in the bill protecting community associations from potential liability and responsibility.
- **Corporate Reinstatement** – Proposed changes to Section 13.1-916 of the Virginia Nonstock Corporation Act were proposed by Delegate Albo (House Bill 1527) that would have allowed for reinstatement of a corporation's status, regardless of the length of time that has passed since the corporate status was terminated. VALAC worked with Delegate Albo and affected stakeholders, but were unable to reach consensus. VALAC is committed to continuing to review this issue.
- **Written Consent to Board Decisions** – Delegate David Bulova introduced House Bill 1553 related to the use of unanimous written consent by the boards of directors of property owners'

associations. House Bill 1553 would have amended Section 55-510.1 of the Property Owners' Association Act adding additional requirements for the use of written consents by boards of directors of property owners' associations (not condominium unit owners' associations). VALAC worked closely with Delegate Bulova to amend the proposed legislation prior to introduction to ensure a balance of efficient operation and homeowner protection.

- **Declaration Cover Sheets** – Delegate David Bulova introduced House Bill 2307 that would have required the cover sheet for a declaration creating a development that is subject to the Property Owners' Association Act to contain an acknowledgment of the review of best practices for the contents of declarations published by the Common Interest Community Board.
- **Group homes** – Senator Tommy Norment introduced Senate Bill 1373 related to group homes that would have provided that any entity intending to locate a public or private detention home, group home, or other residential care facility in a locality shall give the chief administrative officer of that locality and the president of any home owner's association for the neighborhood in which such public or private detention home, group home, or other residential care facility is to be located at least 90 days' written notice prior to the issuance of the license.
- **Declarant Control of Property Owners' Associations** – Senate Bill 1401 was introduced by Senator Siobhan Dunnavant that would have required, unless the declaration expressly provides otherwise, that the membership of the board of directors of the association include lot owners other than the declarant until the transfer of the common area to the association by the declarant.

Conclusion

The number and significance of legislation continues to place significant demands on the investment of time by members of VALAC. Although the investment of time that VALAC has put into our advocacy efforts over the last 18 years have paid dividends, the nature of legislation introduced, and the sentiments of certain legislators can be alarming.

Throughout the off-session, VALAC needs your support in both investments of time and money. Please continue to stay informed about legislative matters through VALAC's website (www.cai-valac.org) and on Twitter @CAIVALAC.

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