



## The Special Assessment June 2024 Edition

### 2024 Virginia Legislative Update



By Tiago D. Bezerra

Following on the heels of the 2023 statewide elections in which all 140 members of the Virginia General Assembly stood for election, the most diverse and least experienced group of legislators adjourned their veto session on April 17, 2024. It was a busy and politics-filled session with over 3,500 bills and resolutions considered, with roughly only a quarter signed by Governor Glenn Youngkin, who set a new Virginia record after vetoing 201 bills.

Of all the bills brought to the General Session this year, over forty bills were identified as potentially having an impact on planned communities; of these forty bills, several have been approved to amend common interest community statutes along with a couple of noteworthy bills that may impact community association governance and living. Below are summaries and comments on this legislation of which common interest communities should be aware – each of the bills discussed below will go into effect July 1, 2024.

**Foreclosure.** *House Bill 880* and its companion *Senate Bill 341* are the product of a study conducted by the Virginia Housing Commission Local Land Use & Community Living Work Group and follow a growing trend throughout the country to limit the ability of community associations to pursue foreclosure against lots and units because of delinquent assessments. Starting July 1<sup>st</sup>, no foreclosure action can be initiated unless the total amount secured by judgment liens or memoranda of lien exceed \$5,000 – importantly this minimum threshold is calculated from the aggregate total of all existing, valid liens. There are some important details and distinctions about whether costs, interest, and attorney fees can be included in the total, so it will be crucial to confer with association counsel to ensure the requisite threshold is reached.

Fortunately, these bills are not *all* bad. In recognition that some communities' assessments are sufficiently small that an account may not reach the \$5k minimum before lien enforcement periods begin to expire, the General Assembly approved a change extending the time within which foreclosure actions on memoranda of lien may be initiated from three

years to ten years. This is a significant change that should mitigate some of the burdens resulting from the new foreclosure limitations.

Reserves. *House Bill 1209* was the bill recommended by the Housing Commission following approximately 18 months of study by a working group of stakeholders appointed by the Department of Professional and Occupational Regulation. The goal of the working group was to propose amendments to community association statutes in a proactive response to the tragic collapse of a condominium in Surfside, Florida in 2021.

HB1209 makes two significant changes to Section 55.1-1825 of the Property Owners' Association Act ("POA Act") and Section 55.1-1964 of the Condominium Act ("Condo Act"). The first substantive change relates to the authority of boards of directors to levy "additional assessments" which can be used for certain purposes. These additional assessments may be adopted by the board without membership approval and, in a significant departure from prior versions of these Sections, members no longer have the authority to call a membership meeting to reduce or rescind the assessment. Notably, the statute makes clear that these assessments are "in addition to" other assessments already authorized under an association's governing documents.

The second critical change relates to loan authority. The POA Act and Condo Act now explicitly authorize boards to borrow funds on behalf of their associations and to pledge assessments and other revenues as collateral for such loans. These amendments are beneficial particularly for those communities with governing documents that do not already expressly address whether a board can obtain loans and on what conditions. That said, the loan language in the POA Act and Condo Act provide that the governing documents still control. So, for example, if a condominium's bylaws allow a board to obtain a loan only with membership approval, that board may not be able to circumvent the membership approval requirement through the changes to the Condo Act.

In addition to these primary changes addressed at helping boards secure funding to fulfill association maintenance, repair, and replacement obligations, HB1209 also defines what constitutes a *reserve study* and confirms that boards retain the duty to annually adjust the budget to maintain reserves for capital components at a level determined appropriate by the board.

Assessment Authority. *Senate Bill 672* is enacted to correct a problematic opinion issued by the Court of Appeals of Virginia in 2023. In the case of *Burkholder v. Palisades Park Owners Association*, the court of appeals interpreted the POA Act to restrict the purposes for which regular annual assessments could be used. Fortunately, thanks to strong advocacy efforts from across the Commonwealth, SB672 overwhelmingly passed both houses of the General Assembly and was approved by Governor Youngkin.

The legislation boils down to a technical rewrite of Section 55.1-1805 of the POA Act and Section 55.1-1904 of the Condo Act to clarify the original intent of those Sections. As a result, these statutes now more clearly impose restrictions only on the authority of associations to impose charges against less than all of the owners rather than being interpreted to limit the use of annual assessments. Unless the recorded governing documents provide otherwise, charges against one owner (or less than all owners) are not permitted except when levied as (i) a fee for services provided, (ii) a fee for use of the common area, and (iii) as fees expressly authorized by law (e.g., fees for preparation and delivery of resale certificates). The bill further clarifies that the statutes are not to be interpreted to prohibit an association from fulfilling its contractual and legal obligations.

Board Meetings. Reportedly, HB723 arose from confusion among members of a homeowners' association about whether the open meeting requirements established in Section 55.1-1816 of the POA Act necessarily apply to incorporated property owners' associations. The confusion allegedly arose because the Nonstock Corporation Act does not expressly require open board meetings for nonstock corporations. While some would question the confusion to begin with, HB723 was introduced to erase any doubt.

After a couple revisions were made to the original bill that was introduced, a new paragraph has been added to Section 55.1-1816 of the POA Act that intends to make clear that the open meeting and other requirements governing the conduct of board and committee meetings established in the POA Act apply and control regardless of whether the POA is incorporated or unincorporated. The amendment further intends to make clear that these requirements should not be interpreted to prevent an association from relying on other corporate authorities established under law and governing documents – such as the authority of a board to act between meetings by unanimous written consent.

Resale Disclosure. A group of bills (HB 876, SB 526, HB 105) will implement various “technical” amendments to the Resale Disclosure Act aimed primarily at the process for delivering and paying for resale certificates and associated updates. The substantive changes to the process are not expected to be as impactful as the other bills discussed in this article but include clarifying who may request and receive resale certificates and confirming that resale certificates may not be required for “initial disposition” of units. In addition, the statute will now state that when a resale certificate is not timely provided by the association, it may be deemed “unavailable,” thereby triggering the ability of a purchaser to cancel the purchase contract. Finally, the revisions clarify that financial updates can be requested by anyone associated with the real estate transaction who is authorized by the seller or purchaser, and the associated fee is to be paid at settlement (rather than upon request) unless the fee can be paid immediately through electronic means.

Towing. *House Bills 925 and 959* have generated some questions and concerns about the ability of community associations to enforce parking policies through vehicle towing. Fortunately, HB925 – which imposes limitations on when a car can be towed because it displays expired registration or inspection stickers – will not apply to community associations, given that associations are specifically carved out of the legislation.

House Bill 959, on the other hand, will require associations to “wait and see” whether towing procedures will be impacted. After July 1<sup>st</sup>, local governments in Northern Virginia will be able to amend local laws to require towing operators to obtain a “second signature” at the point of towing before a vehicle can be removed from the property. In other words, towing operators could be prohibited from simply conducting roaming tows in private communities based solely on a written contract between the association and towing operator – instead, a volunteer or managing agent could be required to give real-time authorization before any tow occurs. Two things should be emphasized here: one, the ability to impose a “second signature” requirement already exists in many Virginia localities outside of Northern Virginia. Two, the “second signature” would become a requirement *only if* the local government adopts an ordinance putting it in place. Associations in Northern Virginia will need to pay attention to ordinance changes being considered by their local governments to determine whether any changes in towing procedures will be required.

We hope this article helps you prepare for upcoming changes to laws affecting Virginia common interest communities. If you have questions about this year’s legislation or other legislative and judicial trends, please do not hesitate to contact us.

### **2024 Legislative Update “To-Do” List**

Boards should consider taking the following actions related to the laws addressed in this article:

- ✓ *For condominium unit and property owners’ associations,* consider whether charges the association imposes against less than all of the owners are permitted under the amended law.
- ✓ *For condominium unit and property owners’ associations,* consider whether and on what conditions an “additional” assessment may be adopted to help meet funding needs during the year.
- ✓ *For condominium unit and property owners’ associations,* consider whether and on what conditions the board of directors may obtain a loan on behalf of its association.

- ✓ *For condominium unit and property owners' associations, ensure the association has an up-to-date reserve study which meets the defined requirements established in relevant statutes, and annually consider whether the budget needs to be adjusted to maintain appropriate reserve levels.*
- ✓ *For condominium unit and property owners' associations in Northern Virginia, monitor whether any "second signature" requirement is being proposed by local government with respect to towing vehicles and consider speaking at public hearings on the expected impact on your association.*

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## **The Corporate Transparency Act: Updates from FinCEN**

As mentioned in prior communications from our firm, the federal Corporate Transparency Act ("CTA"), adopted in 2021, may start requiring most community associations to file a "beneficial ownership information" (or BOI) report by no later than January 1, 2025. The Financial Crimes Enforcement Network (FinCEN) periodically provides updates and clarification regarding frequently asked questions of it regarding reporting companies, exemptions, beneficial owners, reporting requirements, and many other issues. Below please find a link to the most recent version of the Frequently Asked Questions answered by FinCEN:



<https://www.fincen.gov/boi-faqs>

Of particular interest to common interest community associations may be the following information recently provided by FinCEN (reprinted below from the FinCEN FAQ):

### **C. 10. Are homeowners associations reporting companies?**

*It depends. Homeowners associations (HOAs) can take different forms. As with any entity, if an HOA was not created by the filing of a document with a secretary of state or similar office, then it is not a domestic reporting company. An incorporated HOA or other HOA that was created by such a filing also may qualify for an exemption from the reporting requirements. For example, HOAs recognized by the IRS as section 501(c)(4) social welfare organizations (or that claim such status and meet the requirements) may qualify for the tax-exempt entity exemption. An incorporated HOA that is not a section 501(c)(4) organization, however, may fall within the reporting company definition and therefore be required to report BOI to FinCEN.*

*[Updated June 10, 2024]*

### **D. 13. Who is the beneficial owner of a homeowners association?**

*A homeowners association (HOA) that meets the reporting company definition and does not qualify for any exemptions must report its beneficial owner(s). A beneficial owner is any individual who, directly or indirectly, exercises substantial control over a reporting company, or owns or controls at least 25 percent of the ownership interests of a reporting company.*

*There may be instances in which no individuals own or control at least 25 percent of the ownership interests of an HOA that is a reporting company. However, FinCEN expects that at least one individual exercises substantial control over each reporting company. Individuals who meet one of the following criteria are considered to exercise substantial control over the HOA:*

- *the individual is a senior officer;*

- *the individual has authority to appoint or remove certain officers or a majority of directors of the HOA;*
- *the individual is an important decision-maker; or*
- *the individual has any other form of substantial control over the HOA.*

*[Issued April 18, 2024]*

To find out more about the reporting process under the Corporation Transparency Act and FinCEN, please visit <https://www.fincen.gov/boi>.

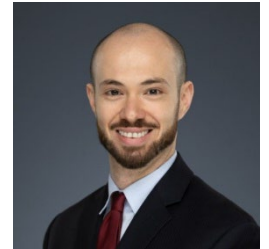
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## **CWMEB Welcomes Two New Attorneys**



Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. is excited to announce that **James “Randy” Herring** has joined the firm and is working in the firm’s Richmond office. Randy received his undergraduate degree from Old Dominion University and his law degree from Liberty University School of Law. Prior to going to law school, Randy was a law enforcement officer with the Albemarle County Police Department. After law school Randy practiced in Albemarle County and Culpeper County as an Assistant Commonwealth Attorney. Recently, Randy was employed by the Office of the Attorney General, focusing on prosecuting unemployment insurance fraud.

The firm is also excited to announce the hiring of **Josh Cergas** as an associate in the firm’s Fairfax office. Josh received his undergraduate degree from New York University and his law degree from The George Washington University Law School. Josh will work in the community association practice group and assist the firm’s Virginia clients in general counseling, contract review, collections and similar matters.



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## **Chadwick Washington Zoom Webinar Series**

Chadwick, Washington, Moriarty, Elmore & Bunn, P.C., is pleased to host and invites you to attend one or more of its educational Webinar Series for 2024 highlighting topics relating to community association law and governance. Each Webinar is one hour, with two topics presented by CWMEB attorneys followed by Q&A Sessions in separate Zoom breakout rooms staffed by CWMEB attorneys. The waiting room for the Webinars will open about 15 minutes before the sessions begin at 7:00 p.m., with the Q&A Breakout Rooms opening at approximately 7:40 p.m.

Topics this season include Neighbor-to-Neighbor Disputes & Group Homes in the Fair Housing Era; Find the Money – Post-Judgment Collection Remedies; Association Special Funding Options; Navigating the Corporate Transparency Act; Top 10 Amendments to Governing Documents; Are Rules Enough? Behavior Modification in Associations; Election Integrity in New Era: From Paper to Online Voting; Case Law Update; The Ins and Outs of Exec Session and Confidential Information; Defending an Administrative Fair Housing Claim: An Overview; Associations in Social Media: Best Practices; Managing the

Risks: Tips for Avoiding Premises Liability Claims; Parliamentary Procedure; a Virginia legislative update (June sessions); and more.

The firm's next educational Zoom Webinar will be held on **Monday, June 24, 2024, at 7:00 p.m.** and will include presentations regarding a **Virginia Legislative Update** and **Case Law Update**. If you are interested in registering, you may do so directly [here](#).

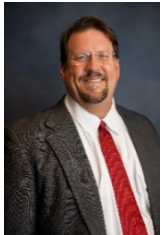
We look forward to seeing all of our clients and guests during our 2024 Webinar Series and encourage you to register early for those topics and presentations you don't want to miss. The schedule listing the dates, times and topics for the 2024 Webinar Series is posted [here](#). Clients, managers and guests can also register for the Webinar(s) of choice directly [here](#). Additionally, more information can be found on the Seminar Series page of our website at [www.chadwickwashington.com](http://www.chadwickwashington.com).

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## Firm Happenings



**Brendan Bunn** of the firm's Fairfax office is co-chairing a task force of the Community Associations Institute to explore ways for our industry to challenge the reporting requirements of the new federal Corporate Transparency Act, which would require associations to report certain information regarding their volunteer directors to the federal government. Together with other members of the College of Community Association Lawyers (CCAL), Brendan co-authored an *amicus* brief that was filed with the US Court of Appeals for the 11th Circuit to support a challenge to the CTA filed by a business trade association in Alabama. A copy of the brief can be found [here](#). Brendan currently serves as President of the Board of Governors of CCAL.



On June 6, 2024, **Jerry Wright** and **Olga Tseliak** taught the CICB Law and Regulation course for CICB Licensure at the Legal & Legislative Update Expo for the Southeastern Virginia Chapter of Community Associations Institute.

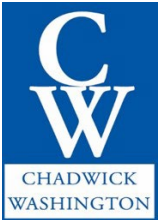


On June 18, 2024, **Dan Blom** and Troy Krepich at CMC and SCS spoke on legislative changes in the common association management industry to participants at a Legal Webinar entitled "Legislative Updates Affecting the Community Association Management Industry."



**Michael Sottolano** and **Olga Tseliak** will be speaking on June 26, 2024, at a webinar to participants on legislative changes and case decisions affecting the common interest community association industry.

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