

# 2015 NEW VIRGINIA LAWS

All of the measures summarized below were signed into law by Governor Terry McAulliffe (D) and become **effective on July 1, 2015**.

## REALTOR® AND REPORT CARD BILLS

### **Delinquent Payments for Water or Sewer Systems HB 1424 (Marshall, D.W.) SB 868 (Chafin)**

Current law prohibits water authorities from attaching a lien or otherwise requiring a landlord or property owner to pay delinquent water bills incurred by their tenants before providing service to new tenants. However, an oversight in state Code allowed this practice to continue in a few localities. This clean-up bill corrects the problem.

### **Landlord-Tenant Laws HB 1451 (Miller)**

Makes several changes to the Virginia Landlord Tenant Laws, including:

- Provides that the 120-day termination notice shall not be waived, except in the case of a tenancy from month to month, which may be terminated by the landlord by giving the tenant 30 days' written notice prior to the next rent due date;
- Provides that nothing in this law prohibits an owner of a commercial or residential building from including water, sewer, electrical, natural gas, or other utilities in the amount of rent as specified in the rental agreement or lease;
- Prohibits a landlord from photocopying a U.S. government-issued identification under certain circumstances;
- Allows a landlord and a tenant to agree in a rental agreement that the tenant pay prepaid rent;
- Allows a landlord to enter into an agreement with a third-party service provider to maintain tenant records in electronic format and releases the landlord from liability in the event of a breach of the electronic data of the third-party service provider;
- Allows a landlord to include as part of the rent, the tenant's prorated share of the insurance coverage of the premises or the prorated share of a self-insurance program held in an escrow account by the landlord. The landlord may apply these funds to pay claims pursuant to the landlord's self-insurance plan;
- Allows a landlord to release information about a tenant or prospective tenant to the managing agent or a successor to the managing agent;
- Provides that when there is more than one tenant on a lease and there is no forwarding address, after the one year and 45 days, the landlord shall forward the balance of the security deposit and other moneys due the tenant to the Virginia Department of Housing and Community Development.
- Allows a landlord and tenant to agree for the tenant to temporarily vacate a dwelling unit in less than 30 days to provide access for landlord to remedy nonemergency property conditions; and
- Provides that, if there is fire or casualty damage, the landlord may terminate the rental agreement by giving 14 (rather than 30) days' notice to the tenant.

### **Recovering Rent or Possession for Family Trusts HB 1452 (Miller)**

Because family trusts were not specifically spelled out in the VRLTA, property managers could not appear in court on behalf of their clients. This law corrects that oversight and allows an employee who has proper written authorization by a manager, general partner, or trustee of a family trust to sign

pleadings as the agent of the business entity to obtain a judgment for possession or for rent or damages under the Virginia Residential Landlord-Tenant Act.

#### **Enticing Persons to a Dwelling to Commit a Crime [HB 1493](#) (Miller)**

This law was enacted to protect Realtors® and other professionals from being lured into a house by someone who has the intent to commit a crime against them. The law provides that a person who commits certain specified crimes by enticing, soliciting, requesting, or otherwise causing the victim to enter the dwelling house is guilty of a separate and distinct Class 6 felony. Crimes that fall under this law include murder, abduction, robbery, rape, etc.

#### **Virginia Residential Property Disclosure Act [HB 1642](#) (Stolle) [SB 775](#) (Locke)**

As localities are adding storm water facilities on individual properties and requiring that homeowners maintain these or risk penalties, buyers should check with local governments to determine if such an agreement is attached to that property. The law adds language to the Virginia Residential Property Disclosure Statement's list of disclosures that advises the purchaser to exercise due diligence in investigating whether there is a storm water detention maintenance agreement on the property.

Similarly, buyers should be able to identify whether properties will need additional flood insurance because they are located in FEMA-determined special flood hazard zones. The law advises purchasers to exercise due diligence in this regard, including obtaining a flood certification or mortgage lender determination of whether the property is located a special flood hazard areas and reviewing any map depicting special flood hazard areas to determine whether flood insurance is required.

#### **Variations Granted by the Board of Zoning Appeals [HB 1849](#) (Marshall, D.W.)**

This law is a reform of the Board of Zoning Appeals (BZA) process which changes the burden of proof requirements to obtain a variance from a local zoning ordinance. The law eliminates the requirement that a variance is needed due to "unnecessary or unreasonable hardship to the property owner" and instead allows a variance to be issued because the ordinance "unreasonably restricts the utilization of the property." It also requires that the property owner be given equal time to present their case at the BZA hearing with whatever time is given to the local government. The new law changes the burden of proof from existing law and would specify, in a BZA hearing, the property owner has the burden of proof by a preponderance of the evidence in a request for a variance. Finally, it establishes a statewide standard for hearing of a variance request from a private property owner, allows for and regulates communications between all parties involved in the case, and amends appeal processes.

#### **Real Estate Transaction Recovery Fund [HB 1965](#) (Rust)**

To make a claim under the Real Estate Transaction Recovery Fund, a fund established to award compensation to consumers who have been harmed in a transaction where the licensee was found guilty of a Real Estate Board regulation, previous law required judges to make a specific judgment of "improper or dishonest conduct." This technicality was keeping the Virginia Real Estate Board from awarding money owed to consumers as a result of a general judgment. The new law eliminates the need for the prescriptive judgment and clarifies the eligibility requirements for consumers to make a claim under Real Estate Transaction Recovery Fund

#### **Condo and POA Laws [HB 2100](#) (Peace)**

Issues have arisen in the relationships of Realtors®, homeowners, and POAs and COAs. This legislation provides clarity in the law regarding what fees may be charged and what actions ownership associations may take. Specifically the new law prohibits a unit owners' association from charging any fees not

expressly authorized by law or in the declaration and gives the Common Interest Community Board the power to assess a monetary penalty for certain violations.

The law also provides that an association may not limit or prohibit an owner from renting his unit or lot unless authorized in the declaration, prohibits the association from charging fees for any rental, including a security deposit, or other processing fee in excess of \$50 as a condition of approval of the rental, and prohibits the association from requiring the owner to use a lease prepared by the association.

The law also sets new rules for providing association disclosure documents electronically, requires an association to maintain a website link for 90 days if the disclosure packet is provided electronically by that link, and prohibits the charging of additional fees, beyond a \$50 update fee, for a 12-month period. The bill contains technical amendments.

**Cash Proffers for Residential Construction SB 1257 (Smith)**

This bill removes the July 1, 2017, expiration date of a current law that delays the payment of certain per-dwelling-unit cash proffers until after the final inspection of the property and prior to the issuance of any certificate of occupancy.

## CONDO/POA/TIME-SHARE

**Common Interest Community Board best practices HB 1632 (Bulova)**

Requires the Common Interest Community Board to develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act.

**Advertisement of foreclosure sale by a trustee of time-share properties HB 1794 (Knight) SB 1015 (Cosgrove)**

Allows the optional streamlined advertisement of a time-share property being foreclosed upon, requiring publication of the time, place, and date of sale; identification of the time-share being sold; contact information for obtaining further information about the sale; and a website address where more complete information and documentation can be obtained.

**Condominium Act; suspension of voting rights prohibited HB 2055 (Pogge)**

Provides that except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive organ pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments.

**Condo and POA Act; notice of sale under deed of trust HB 2080 (Leftwich); SB 1157 (Cosgrove)**

Clarifies that the required notice of a sale under a deed of trust applies to individual residential lots located in a development subject to the Property Owners' Association Act. The bill also provides that upon receipt of such notice, the governing body of a unit owners' association or of a property owners' association, on behalf of the association, shall exercise whatever due diligence it deems necessary with respect to the unit or lot subject to such sale to protect the interests of the association. In addition, the bill (i) amends the definition of unit owner in the Condominium Act to include any purchaser of a

condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located, and (ii) adds a definition of lot owner in the Property Owners' Association Act.

**Condominium Act; meetings of the unit owners' association** [SB 1390](#) (Marsden)

Provides for a unit owners' association or unit owner to petition the circuit court to order a meeting of the unit owners' association for the purpose of the election of officers if (i) no annual meeting has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments and (ii) the unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years that have been unsuccessful due to the failure to obtain a quorum.

## COURTS AND CLERKS' OFFICES

**Unlawful detainer proceedings; satisfaction of judgments** [HB 1767](#) (Loupassi)

Provides that in an unlawful detainer proceeding in which the defendant fails to appear, the plaintiff may submit evidence of outstanding rent and other damages by affidavit or sworn testimony. The bill also provides that if a lease requires rent to be due on the first of the month in advance for the entire month, the amount due at the date of the hearing shall include rent for the entire month, if so requested by the plaintiff. The bill further requires a creditor to note satisfaction of a judgment only when it has been fully paid.

## LICENSING AND REGULATION

**Persons certified as proficient to offer Radon screening, testing, or mitigation** [HB 1723](#) (Simon)

Updates and clarifies provisions governing the credentialing of individuals who may conduct or offer to conduct radon screening, testing, or mitigation in the Commonwealth and updates provisions governing the standards for radon testing in the Commonwealth.

**Exemptions from licensure from Virginia Real Estate Board** [HB 1795](#) (Knight) [SB 1016](#) (Cosgrove)

Provides that the exemption from licensure provided for the owner of property extends in the case of property governed by the Virginia Real Estate Time-Share Act to affiliated entities of the owner where (i) the owner has a controlling interest in the affiliated entity or (ii) the affiliated entity and the owner have a common parent company.

**Asbestos, Lead, and Home Inspectors** [HB 2103](#) (Peace)

Makes it unlawful for any person who is not a certified home inspector and who has not successfully completed the training module required by § 54.1-517.2 to conduct a home inspection on any new residential structure. The bill also authorizes the Virginia Board for Asbestos, Lead, and Home Inspectors (the Board) to issue a certificate to practice as a certified home inspector to any applicant who, in addition to other requirements, has submitted satisfactory evidence that he has successfully completed such training module, which the bill requires the Board to develop in conjunction with the Department of Housing and Community Development, based on the International Residential Code component of the Virginia Uniform Statewide Building Code. The bill has a delayed effective date of July 1, 2016, with the exception of provisions relating to the development of the training module, which become effective in due course.

**Appraisal management companies; compensation of appraisers SB 1445 (Martin)**

Provides for an appraisal management company to compensate appraisers in compliance with § 129E(i) of the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.).

## ESTATES AND TRUSTS

**Sale of Property Held as Tenants by the Entireties in a Trust SB 762 (Edwards)**

Clarifies that the proceeds of the sale of property held as tenants by the entireties in a trust retain the same immunity from a separate creditor of one spouse as is provided for the property itself. The bill also clarifies that property held in trust where both spouses are beneficiaries of one trust or where each spouse is a beneficiary of a separate trust and the two separate trusts together hold the entire property is a tenancy by the entireties, provided that the other requirements for such a tenancy are met. Finally, the bill clarifies that the creditor protection provided under current law may be waived. The provisions of this bill apply to any property of a husband and wife that is held by them as tenants by the entireties and conveyed to their joint revocable or irrevocable trusts, or to their separate revocable or irrevocable trusts, regardless of whether such conveyance occurred before or after the effective date of this bill.

**Liability of heir or devisee for real estate conveyed SB 1064 (Obenshain)**

Provides that real estate sold or conveyed as part of a decedent's estate is not liable to persons entitled to be paid out of such real estate if the sale was made more than one year after the death of the decedent, the conveyance was bona fide, and no debts or demands report has been filed prior to the sale. The bill returns the law to its state prior to the recodification of Title 64.1 in 2012.

## LANDLORD-TENANT

**Landlord and tenant laws; applicability to campgrounds HB 1739 (Hodges)**

Provides that campgrounds are not subject to the landlord and tenant law or the Virginia Residential Landlord and Tenant Act.

**Visible mold remediation under Virginia Residential Landlord and Tenant Act HB 1867 (Krupicka)**

Provides that where there is visible evidence of mold in a dwelling unit, the landlord shall promptly remediate the mold conditions in accordance with the requirements for visible mold remediation and reinspect the dwelling unit to confirm that there is no longer any visible evidence of mold in the dwelling unit. The bill requires the landlord to make available to the tenant copies of any available written information related to the remediation of mold.

**Retaliatory conduct by landlord HB 1905 (Lopez)**

Removes the requirement in the Virginia Residential Landlord and Tenant Act that the court determine that the "primary" reason for a landlord taking an action for possession or termination of a rental agreement is retaliation. The tenant continues to have the burden of proving retaliatory intent. The bill also adds in landlord and tenant law a provision prohibiting retaliatory conduct by the landlord.



## TAXATION

### **Real property tax notice of assessments** [HB 1291](#) (Ware) [SB 678](#) (Watkins)

Clarifies that the information required on the notice of assessment regarding assessments in the immediately prior two tax years refers to the immediately prior two tax years' final assessments.

### **Real property assessment valuation for land preservation** [HB 1483](#) (Rush)

Permits localities to set acreage requirements less than the current five-acre requirement for agricultural property to qualify for land use valuation.

### **Multijurisdictional sale of tax-delinquent property** [HB 1567](#) (Orrock)

Provides a method for the sale of tax-delinquent real property that is located in more than one locality. The consent of the treasurer of each locality within which the property is located is required.

### **Real property tax exemption for surviving spouses of armed forces killed in action** [HB 1721](#)

(Ramadan) Exempts from taxation the dwelling of the principal residence of a surviving spouse of a member of the armed forces of the United States killed in action. If the value of the dwelling is in excess of the average assessed value of dwellings in the locality situated on property zoned as single family residential, then the portion of the value in excess of such average assessed value shall be subject to taxation. Pursuant to subdivision (b) of Section 6-A of Article X of the Constitution of Virginia, which was adopted by the voters in 2014, the General Assembly previously enacted legislation exempting from taxation the principal residence of such surviving spouse only if the assessed value of the residence was not in excess of the averaged assessed value. This bill exempts the portion of the residence below the average assessed value, regardless of the full assessed value of the dwelling.

### **Real property tax exemption for certain leasehold interests** [HB 1766](#) (Loupassi) [SB 1031](#) (Watkins)

Authorizes localities to exempt from real property tax the leasehold interest in property in which the lessor is exempt from real property tax and the lessee is entitled to federal rehabilitation tax credits related to the property and uses the property for charitable, literary, scientific, cultural, or educational purposes.

### **Waiver of delinquent real property taxes** [HB 2173](#) (Orrock)

Authorizes any locality to waive delinquent taxes on real property in exchange for the owner's donation of the property to a nonprofit organization that builds, renovates, or revitalizes affordable housing for low-income families.

### **Community development authorities** [SB 1448](#) (Vogel)

Provides that any special tax levied or any special assessment imposed by a locality pursuant to an agreement with a community development authority, whether previously or hereafter levied or imposed, constitutes a lien on real estate ranking on parity with real estate taxes, and any such delinquent special tax or delinquent special assessment may be collected in accordance with established procedures.

### **Explanation of increased assessment of real property** [SB 872](#) (Cosgrove)

Requires an assessing officer of a governing body to provide, upon taxpayer request, a written explanation of or justification for an increase in the assessed value of the taxpayer's property.

## TRANSPORTATION

### **Use of revenues by the Northern Virginia Transportation Authority** [HB 1470](#) (LaRock)

Includes transit projects in those transportation projects that will be rated by VDOT in accordance with § 33.2-257 before they are funded by the Authority. The bill has a delayed effective date of July 1, 2016.

### **Northern Virginia Transportation Authority regional plan** [HB 1915](#) (LeMunyon) [SB 1314](#) (Marsden)

Requires NVTAs regional transportation plan to make reducing congestion in Planning District 8 its primary objective to the greatest extent practicable. The bill requires each locality embraced by the Authority to annually report to the Authority any land use or transportation elements of its comprehensive plan that are not consistent with the regional transportation plan.

## LAND USE AND ZONING

### **Disputes over terms of conservation easements** [HB 1488](#) (Pogge)

Allows a landowner or other party to a conservation easement to request that the Virginia Land Conservation Foundation use the Administrative Dispute Resolution Act to resolve a dispute relating to the interpretation of the easement.

### **Onsite sewage systems; waivers** [HB 1804](#) (Knight)

Provides that an owner of real property who (i) obtained a waiver to repair a failing onsite sewage system on or between July 1, 2004, and December 6, 2011, (ii) completed such repair, and (iii) voluntarily upgrades the system may request, and shall receive, a voluntary upgrade waiver.

## OTHER ISSUES

### **School Performance Report Card** [HB 1672](#) (Greason) [SB 727](#) (Black)

Requires the Board of Education, in consultation with the Standards of Learning Innovation Committee and no later than July 1, 2016, to redesign the School Performance Report Card so that it is more effective in communicating to parents and the public the status and achievements of the public schools and local school divisions in the Commonwealth. The bill requires the Board to provide notice and solicit public comment and summarize the redesigned Report Card in advance of July 1, 2016. The bill also repeals the A-F school grading system created in the 2013 Session and amended in the 2014 Session.

