

A Quick Course on

Legislation adopted by the Virginia General Assembly during the 2009 session will go into effect on July 1, 2009. Make sure you know the laws that will affect you – and your clients – in the coming year.

NOTE: The **R** symbol next to an entry indicates Realtor®-sponsored legislation.

REAL ESTATE TRANSACTIONS & LICENSING:

Property Disclosure: Stormwater Facilities (HB 1856) Provides that the owner makes no representations on the presence of any stormwater detention facilities located on the property and purchasers should exercise due diligence to determine the presence of such facilities.

R Grantor Tax Fraud (HB 2135/SB 1157) Increases penalties for understating the value of the property to avoid grantor's tax payments and requires repayment of underestimated tax plus interest.

R Commercial Agent Compensation (SB 1031) Authorizes in-state real estate brokers to compensate out-of-state licensees who bring a client to Virginia to purchase or lease commercial real estate.

R VREB Background Checks (HB 2541) Allows the Virginia Real Estate Board to conduct background checks of initial real estate license applicants. Renewing applicants will be required to verify that they have no undisclosed criminal convictions.

CRESPA Disclosures (HB 2568) Expands the required disclosure to include statements that (i) the

seller may not require the use of a particular settlement agent, and (ii) the provisions of the Consumer Real Estate Settlement Protection Act may not be varied or waived.

REAL ESTATE & SETTLEMENT SERVICES:

R Attorney Referral Fees (HB 2040) Prohibits attorneys from receiving real estate referral fees unless they hold a real estate license. Attorneys may still be compensated for services of actual value.

Settlement Agent Registration (SB 938) Changes registration requirements for settlement agents from the Virginia State Bar to the agents' respective licensing authorities (Virginia Real Estate Board or the State Corporation Commission).

Mold Inspector/Remediator Licensing (HB 2032) Requires licensing of mold inspectors and remediators by July 1, 2011. These requirements do not apply to mold contamination of less than 10 square feet or to landlords performing remediation on less than four of their own residential properties.

Lead-Based Paint Renovation Businesses (HB 2432) Regulates lead-based paint renovation businesses and individuals. "Renovation" is defined as the modification of any existing structure, for compensation, that disturbs painted surfaces.

Land Records Pilot Program (HB 1845/SB 935) Creates a Prince William County pilot program for occasional remote access to land records. The clerk shall assess fees for daily access and images downloaded.

Land Records: Social Security Numbers (SB 1277) Requires that online land records may contain

only the last four digits of the social security number of any party, beginning July 1, 2012.

Release of Deed of Trust (HB 2291/SB 888) Prohibits settlement agents and real estate attorneys from facilitating an assignment, to any third party designated by them, of their client's right to a \$500 penalty for failure to deliver a certificate of satisfaction releasing a deed of trust.

Notaries public (SB 833) Directs the Secretary of the Commonwealth to develop electronic notarization standards.

Licensure of Landscape Architects (SB 940) Requires the licensure of landscape architects by July 1, 2010.

Manufactured Housing (HB 2569/SB 1459) Sets actual damages that manufactured home dealers may retain when a buyer fails to accept delivery to \$4,000 of an in-stock home and to \$7,000 for special ordered home until July 1, 2011.

MORTGAGE LENDING & FORECLOSURES:

Mortgage Originator Licensing (HB 2031/SB 1171) Provides for the licensure of mortgage loan originators after July 1, 2010. An originator is someone who takes an application for or negotiates the terms of a residential mortgage. Applicants must undergo a background check and provide a surety bond of at least \$25,000. A license is not required for administrative employees.

Mortgage Broker Duties (HB 1776/SB 1020) Requires mortgage lenders to use reasonable care in securing a loan that is in the best interests of the applicant, considering the applicant's circumstances and loan

Virginia's New Laws

characteristics. Borrowers may seek recovery of damages caused by a lender's breach of duty.

Mortgage Lender Fraud (HB 2262/SB 1170)

Provides that residential mortgage loan originators shall not use any deception, fraud or misrepresentation in mortgage loan transactions. The Attorney General may investigate and recover up to \$2,500 per violation in addition to any damages, expenses and attorney fees.

Lender Employee Background Checks (HB 2030)

Repeals provisions enacted in 2008 requiring licensed mortgage lenders to conduct employee background checks.

Fraudulent Conveyances (SB 959) Awards attorney fees to a creditor where a gift, deed, conveyance, assignment, or transfer upon the estate of a debtor is declared void.

Limitation on Mortgage Enforcement (SB 1291)

Extends enforcement rights to July 1, 2010 for mortgages and deeds of trust that came due and payable between July 1, 1988, and July 1, 2000.

Notice of Foreclosure (HB 2150) Allows local governments in Planning District 8 (Northern Virginia) to require notice of a residential foreclosure. The person authorized to conduct the sale shall provide the location of the property and the contact information of the entity conducting the sale to the locality.

Cancellation of Property Insurance (HB 1887)

Authorizes insurers to cancel a policy on an owner-occupied dwelling when it has been sold pursuant to foreclosure of a deed of trust.

Foreclosure Rescues (HB 2261/SB 1169)

Prohibits foreclosure rescue services that receive a fee (i) prior to completion of contracted services, if not involving the sale or transfer of the property, or (ii) prior to settlement if involving the sale or transfer of the property. Mandatory arbitration is also prohibited.

New Laws, continued on page 10

NEW LAWS AT A GLANCE: Five Things You Should Know for 2009

Grantor's Tax – Initial efforts to return the grantor's tax basis to the sales price of the property did not pass the General Assembly. After several amendments and consideration by a conference committee, the General Assembly agreed to study grantor's tax calculations prior to the start of the 2010 session to determine the impacts of this change. NVAR and VAR remain committed to a return of the sales price valuation for the grantor's tax in the 2010 General Assembly session.

Stormwater Facilities Disclosure – The Virginia Residential Property Disclosure Statement will now state that the owner makes no representation as to the presence of any stormwater detention facilities located on the property and that purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of such facilities on the property.

Text Messaging While Driving – Virginia now prohibits operation of a motor vehicle on the highways in the Commonwealth while using any handheld personal communications device to manually enter multiple letters or text or to read a text message. This bill provides exemptions for using global positioning systems (GPS), reading caller identification information, and reporting an emergency with a wireless telecommunications device.

Background Checks – The Virginia Real Estate Board is authorized to conduct background checks of initial real estate license applicants. Renewing applicants will be required to verify that they have no criminal convictions that have not been disclosed to the Board.

Septic Systems – This legislation clarifies that local governments do not have the authority to ban alternative septic systems that have been approved for use by the Virginia Department of Health and cannot require additional maintenance of these systems beyond what is prescribed by the State Board of Health. The presence of an alternative septic system will be recorded in the property deed and the maintenance requirements for that system will be referenced to alert prospective purchasers about their maintenance responsibilities.

New Laws, continued from page 9

LANDLORD & TENANT:

Landlord and Tenant Laws (HB 2080)

- » Requires the landlord to give tenant notice for insecticide application. Tenants must follow written instructions to prepare the unit for insecticide application and pest elimination.
- » Eliminates the landlord’s obligation to pay for mold remediation when a result of tenant actions.
- » Removes tenant’s right to repair or replace damaged items. The landlord may now charge all costs to the tenant, payable on the next rent due date.
- » Sets liquidated damages at 150 percent of the per diem of monthly rent.
- » Requires written notice to tenants when a mortgage default or pending foreclosure notice is received. Managing agents are exempt unless they receive the lender notice.
- » Sets 2009 deposit interest rates at 0 percent.

R Vehicle Towing (HB 1724/SB 997) Prohibits local governments from requiring property managers to authorize towing of illegally parked vehicles outside of normal business hours. Localities would designate an official to authorize after-hours towing.

Rent Escrow Pending Appeal (HB 2306) Bars disbursement of escrowed rent within 10 days of an unlawful detainer judgment unless agreed to by the parties. The escrow shall be transmitted to the clerk of the circuit court if the landlord appeals.

Garnishment (HB 1668) Allows a parent whose gross monthly income is below \$1,750 a month to exempt from garnishment \$34 per week for one dependent child; \$52 per week for two; and \$66 per week for three or more children.

Stop-payment of Checks (HB 1683) Allows recovery of the check and other costs if a stop-payment order on a check is placed in bad faith.

CONDOMINIUM, CO-OP & POA:

R Auction Sale Exemptions (HB 1785) Exempts properties sold at auction from the three-day right of cancellation under the Property Owner’s Association Act. The disclosure packet will be made available prior to the sale.

Expedited Delivery and CIC Board Fines (SB 1143) Limits Common Interest Community Board fines to governing boards rather than individual board members. Disclosure packet expedited delivery fees shall be charged at the request of the seller with the consent of the association manager.

Access to POA Records (HB 2305) Provides that actual salary information of certain property owners’ association employees shall be available to association members.

Duty to Provide Information (HB 2289) Requires Condominiums, POAs and Co-Ops to provide a list of the property owners of the association if requested by Commissioner of Revenue to administer local property taxes.

Expired Cooperative Rights (HB 2599) Allows association members to extend any expired rights or create additional cooperative interests if the original time limit has expired. This shall not extend or renew control for the original declarant.

LAND DEVELOPMENT:

Transfer of Development Rights (HB 2055/SB 1418) Allows for the transfer of development rights between individual parcels. Development rights may be severed but not immediately affixed to a receiving property; the owner of a sending property may apply for tax abatement as compensation; and

transfers must be voluntary.

Application Disclosures; City of Alexandria (SB 929) Requires land use applicants to disclose all ownership or interests in the land or application subject to the hearing.

Board of Zoning Appeals (HB 1637) Permits local boards of zoning appeals to take action with a majority vote of members present.

Plan Validity (HB 2077) Extends the period of validity to July 1, 2014 for preliminary and recorded plats and final site plans outstanding as of January 1, 2009.

Expedited Plan Review (HB 2429/SB 1095) Allows the Town of Leesburg to develop expedited development review procedures for subdivision and site plans.

Preservation of Historical Sites (SB 1416) Allows local governments to establish areas of known historical or archaeological significance and to require development applicants to document how they will preserve such resources.

Comprehensive Plans (SB 1064) Requires a local planning commission to post comprehensive plans under consideration on a publicly-available Web site.

Public Hearings on Proffers (SB 1335) Allows local governments to waive public hearings for proffered conditions that do not affect use or density and are requested by the applicant.

SEPTIC SYSTEMS & WELLS:

R Alternative Septic Systems (HB 1788/SB 1276) Prohibits local governments from banning or requiring additional maintenance of alternative septic systems that have been approved by the Virginia Department of Health. The presence of such systems will be recorded in the property deed with reference to the system’s maintenance requirements.

Private Residential Wells (HB 2270)

Requires the Board of Health to regulate minimum storage capacity and yield requirements for residential drinking wells.

Onsite Treatment Works (HB 2188)

Directs the Board of Health to require survey plats for an onsite or alternative sewage system permit application.

Private Wells (HB 1681) Requires a site plan to be included in a private well permit application.

Septic Systems Technology

(SB 1509) Allows Water Quality Improvement Fund grants for the replacement or modification of residential onsite sewage systems to provide nitrogen removal capabilities.

PRIVATE PROPERTY RIGHTS:**Derelict Buildings (HB 1671/**

SB 1094) Defines a derelict building as a building that might endanger the public and has been (i) vacant, (ii) boarded up and (iii) unconnected to required utilities for over six months. Localities may provide tax abatements and fee refunds for timely demolition or renovation.

R Vested Property Rights (HB 1680) Affirms the right of property owners to repair, rebuild, or replace a building to its original nonconforming condition when damaged greater than 50 percent by an act of God, including accidental fires.

Cemeteries (SB 1450) Allows localities to document cemeteries located on private property.

TAXATION:

Commercial Property Tax (HB 2479 and HB 2480) Reduces the rate of the local option commercial property tax from \$0.25 per \$100 to \$0.125 per \$100 until June 30, 2013. Localities are required to use these funds only for new road or transit construction, operating costs and debt service.

Homestead exemption

(HB 2559 and HB 2560) Increases the exemption to \$10,000 for property owners who are veterans or 65 years of age or older.

Land Preservation Credit (HB 1891/

SB 986) Reduces from \$100,000 to \$50,000 the amount of the land preservation credit for tax years 2009 and 2010. Affected taxpayers may claim the credit for two additional years.

Open-Space Easements (SB 907)

Authorizes estate trustees to donate open-space easements to obtain estate tax exclusions.

Livable Home Credit (HB 1938/SB

845) Increases tax credit from \$500 to \$2,000 and the 25 percent amount for accessibility retrofitting to 50 percent, beginning January 1, 2010.

TRANSPORTATION:

Text Messaging (HB 1876) Prohibits vehicle operation while using any handheld device to read, type or send a text message.

Transportation Corridors

(HB 2019/SB 1398) Allows the Commonwealth Transportation Board to establish transportation corridors under the Statewide Transportation Plan.

Parking (HB 1694) Allows Fairfax County, Prince William, Clifton, Herndon and Vienna to prohibit on-street parking of commercial trucks over 20 feet in length or vehicles carrying commercial freight.

HOUSING:**Urban Development (SB 1487)**

Requires a mix of residential housing types, including affordable housing, in designated urban development areas.

Housing Assistance (HB 2132)

Allows localities to provide housing assistance for school board employees.

Affordable Housing Assessments

(SB 1052) Allows localities to determine the fair market value of affordable rental housing and lower the tax assessment accordingly, as long as there are no pending building code violations.

CODE ENFORCEMENT:**Reporting Violations (SB 1478)**

Creates an exception to the Freedom of Information Act to shield the identity of those reporting building or fire code violations.

Graffiti Removal Costs (HB 2138/ SB 1369) Permits localities to charge a property owner or place a lien on the property for the cost of removing graffiti on an unoccupied building, fence or structure.

Graffiti Abatement (HB 2424)

Permits courts to order any person convicted of defacing property to pay restitution for costs incurred by the locality for removal or repair.

ENVIRONMENT:

Green Roofs (HB 1828, HB 1975/ SB 1058) Allows localities to offer incentives for green roof construction.

Certification of Buildings (SB 1004)

Allows architects to certify energy-efficient buildings for local taxation purposes.

Geothermal Heating (SB 1128)

Requires the Board of Health to allow the construction of wells used solely for closed loop geothermal heating systems.

Clean Energy Financing (SB 1212)

Allows localities to provide loans for initial acquisition and installation of clean energy improvements.

Stormwater (SB 982) Requires localities to provide full or partial waivers of charges to any person who redevelops or retrofits property to permanently reduce stormwater flow and pollutant loading. ✱