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703-739-0100

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703-237-1100

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Around the Commonwealth: Legislative Updates and the VA Supreme Court

This month's newsletter highlights two separate topics of interest for the reader. The first is an update on the new laws effecting real estate to come out of the Virginia Legislature and the second is a recent Virginia Supreme Court ruling of note for real estate professionals.

New Real Estate Laws from the Virginia Legislature

New Virginia laws take effect on July 1, 2017, and there are several that pertain to the real estate industry.

Foreclosure of a Residential Rental Property as it Pertains to Tenants This law identifies the foreclosure of a residential rental property as the official act that terminates a rental agreement between a tenant and a landlord/foreclosed owner. As has been common-law practice in the past, the tenant may remain in the dwelling on a month-to-month basis until the new owner terminates the now-temporary agreement. Ensuring a smooth transition for tenants, new owners, and property managers following a foreclosure is the goal of the legislation.

During the time of transition, a tenant should make his monthly rent payment to one of three parties designated by the court system: the new owner; the property manager; or a court-held escrow account. Rent payments should NOT be made to the owner who was foreclosed upon.

Foreclosure of a Residential Rental Property as it Pertains to a Property Manager Just as it does for the tenant and a lease, foreclosure of a residential rental property is the official act that terminates a property manager and an agreement. The property manager may remain in place on a month-to-month basis until the new owner terminates the now-temporary agreement.

A real estate licensee who has his property management agreement terminated for any reason may transfer all funds held in escrow to the landlord and must notify the tenants in writing of the transaction. In the case of a contract being terminated due to foreclosure, the funds may NOT be transferred to the owner who was foreclosed upon.

Property Owner's Association

This law directs a Property Owner's Association (POA) to provide a disclosure packet or resale certificate within 14 days of it being requested. Failure to comply with the request is grounds for the buyer to cancel the purchase and could warrant a fine of up to \$1,000 from the Common Interest Community Board.

Unless a specific declaration exists, the POA cannot require that one of their signs be used as a "for sale" sign. However, they do have the right to prohibit the placement in a common area, and regulate the number of signs displayed, the locations of the signs, how the signs are affixed, and the period of time a sign can remain posted after a settlement has taken place.

Additionally, this law provides for the owner of a unit to be able to designate a real estate licensee to represent him in the sale without needing a formal power of attorney agreement to present to the POA.

Amendments to the Residential Disclosure Act

Amendments include changing the name of disclosure statements from "red flag" to "buyer beware" and allowing said statement to be electronically delivered to potential buyers. In this document owners must disclose in writing any pending enforcement actions of the statewide building code in regards to safe, decent, and sanitary living conditions for which he has received written notification, or any pending violations of local zoning ordinances.

New disclosures that must be made to a potential new owner include if the property is subject to one or more conservation easements, and if the property is subject to a community development authority approved by a local governing body with respect to the presence of a historic district.

Virginia Supreme Court

In a decision handed down on June 1, 2017, the Virginia Supreme Court made a ruling in the case of Ulka Desai, Executrix of the Estate of Lakshmi Desai, and as the Successor Trustee of the Revocable Trust Agreement of Lakshmi Desai as Amended v. A. R. Design Group, Inc. – more commonly referred to as Desai – and a significant opinion was issued.

A mechanic's lien is obtained by a sub-contractor, a supplier, or anyone without a direct contractual relationship with the property owner in an attempt to collect payment. It gives the claimant a security interest in the title to the property, putting a hold on the selling or re-financing of property until the debt has been paid.

In the Desai case a mechanic's lien was filed by A.R. Design Group, Inc. for two properties in a trust. The first trustee, Lakshmi Desai, passed away leaving his niece, Ulka Desai, as the trustee. Ms. Desai became the trustee prior to the lien being filed.

Desai claimed the liens were not valid based on the following paperwork issues:

- Ulka Desai was identified as the executor and not the trustee;
- The vice president of A.R. Design Group, Inc., signed the claimant line and drew a line through the space for an agent signature;
- No date was listed for when interest was claimed or a date of when the debt was due.

The trial court said the liens were valid but Desai appealed to the Virginia Supreme Court who wrote their opinion in favor of the claimants:

- The claimant need not identify the owner, Ulka Desai, as a trustee since her designation as the property owner would allow the lien to appear during a deed search by a potential buyer;
- Although acting as an agent of the A.R. Design Group, Inc., the Vice President signing on the claimant line and not the agent line was not an issue for the Court;
- The Claimant was not requesting interest on the amount owed so, therefore, did not need to identify a start date for the accrual of interest. No due date for the debt was listed but said it to be "payable as therein stated" which the court interpreted to be the date the memoranda was filed.

With the Virginia Code as their basis the Virginia Supreme Court determined the memoranda was "substantially compliant" and handed down a decision very favorable to contractors needing to file a mechanic's lien in order to collect payment for services rendered. MBH always encourages its buyers to purchase the Enhanced Homeowners title insurance policy, when available, so that they have affirmative mechanics lien coverage.

See you at the settlement table!