



Virginia State Bar
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The FEE TAIL

The Real Property Section's
email supplement to
The FEE SIMPLE

The Real Property Section is pleased to provide its members with a new offering: **The Fee Tail**, a newsletter with timely cases and statutes of interest to the practice of real estate law in the Commonwealth. We welcome all of our members to submit any ideas for future Fee Tail editions to Heather Steele at hsteele@pesner.com. We prefer to draw these cases from our members, so if you have recently litigated (or are aware of) a current real estate case, either at the trial court or appeals level, or a recent statute of interest to the section, please contact us.

Below are a few recent cases of interest and new statutes and rulings of note, with links to the decisions and actual opinions from the Supreme Court of Virginia.

Cases of Interest

[Berry v. Board of Supervisors of Fairfax County— Decided March 23, 2023.](#)

The Supreme Court of Virginia found that that Fairfax County Board of Supervisors' approval of zMod at an electronic meeting on March 23, 2021 violated the open meeting provisions of the Virginia Freedom of Information Act, as well as the state's enabling legislation that allowed for certain electronic meetings in response to the pandemic. The Court determined that the action taken by the county in approving zMod was unlawful, and, therefore, it is now deemed void. Thus, zMod has been stricken from the Fairfax County ordinance, and the prior Zoning Ordinance, as it existed before July 1, 2021, is now in effect.

[The Manors LLC, et al. v. Board of Supervisors of Albemarle County— Decided Feb 28, 2023](#)

A county board of supervisors correctly considered neighborhood character as part of public welfare when it denied a homeowner's application to rent five of his guest rooms on a short-term basis known as "homestays," the Court of Appeals held. "It is clear that when zoning administrators consider the character of the area as part of their analysis, that consideration falls within the umbrella of their duty to create convenient, attractive, and harmonious communities . . . Thus, when the Board and their staff considered the character of the area, they properly considered it as part of the public welfare."

Burkholder, et al. v. Palisades Park Owners Ass'n – Decided Feb 7, 2023 (Court of Appeals)

A challenge to inspection fees assessed by a homeowners' association in a large development has succeeded after the Court of Appeals of Virginia found that the individual fees weren't expressly authorized by the association's declaration. The Court found that the association "cannot escape statutory restrictions in Code § 55.1-1805 by imposing an otherwise illegal fee on two or more property owners — or on all the owners — rather than on a single owner individually."

New Statutes and Rulings of Note

Va. Code §§ 55.1-1006 and 55.1-1007 – Real Estate Settlement Agent Fees – Signed into law by the Governor on March 24, 2023.

This bill requires the written consent of the seller's counsel before a settlement agent or its subsidiaries, affiliates, or subcontractors can collect any fees payable to such settlement agent or its subsidiaries, affiliates, or subcontractors from a represented seller.

Va. Code §15.2-2209.:1 - The Permit Extension Bill– Signed into law by the Governor on March 23, 2023.

The Virginia General Assembly extended the sunset date for local land use approvals from July 1, 2023, to July 1, 2025 for various local land use approvals that were valid and outstanding as of July 1, 2020. The bill also provides that its provisions shall not be construed to extend previous extensions related to the housing crisis and that any extension of approvals outstanding as of July 1, 2020, shall apply to any such approvals granted subsequent to July 1, 2020, that expire prior to July 1, 2025. This provision is declarative of existing law.

CFPB Determines State Disclosure Laws on Business Lending are Consistent with TILA – March 28, 2023.

The Consumer Financial Protection Bureau (CFPB) has determined that disclosure laws covering lending to businesses in California, New York, Utah, and Virginia are not preempted by the federal Truth in Lending Act. The CFPB examined the state disclosure laws to determine if they were inconsistent with and preempted by the Truth in Lending Act and affirmed there is no conflict because the state laws extend disclosure protections to businesses and entrepreneurs that seek commercial financing.

In recent years, California, New York, Utah, and Virginia have enacted laws that require lenders to include disclosures in their commercial financing transactions with businesses. Commercial financing transactions are not covered by the federal Truth in Lending Act.

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