

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 906

An Act to amend and reenact §§ 55-79.74:1, 55-79.75, 55-79.80:2, 55-79.81 and 55-79.84 of the Code of Virginia, relating to the Condominium Act.

[S 722]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.74:1, 55-79.75, 55-79.80:2, 55-79.81 and 55-79.84 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.74:1. Books, minutes and records; inspection.

A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C and D, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. This right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five days' written notice reasonably identifying the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if such books and records concern:

1. Personnel matters *relating to specific, identified persons* or a person's medical records;
- ~~2. Communications with legal counsel or attorney work product;~~
- ~~3. 2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;~~
- ~~4. 3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;~~
- ~~5. 4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated pursuant thereto to § 55-513;~~
- ~~5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;~~
6. Disclosure of information in violation of law;
7. Meeting minutes or other *confidential* records of an executive session of the executive organ held pursuant to subsection B C of § 55-79.75;
8. Documentation, correspondence or management or executive organ reports compiled for or on behalf of the unit owners' association or the executive organ by its agents or committees for consideration by the executive organ *in executive session*; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. The unit owners' association may impose and collect a charge, reflecting the actual *and reasonable* costs of materials and labor, prior to providing copies of any books and records.

§ 55-79.75. Meetings of unit owners' associations and executive organs.

A. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer who shall, at least twenty-one days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units and to such other addresses as any of them may have designated to such officer; or notice may be hand delivered by the officer, provided the officer certifies in writing that notice was delivered to the person of the unit owner.

B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of *the unit owners' association* or the executive organ shall be open to all unit owners of record. Minutes shall be recorded and shall be available as provided in § 55-79.74:1. *Notice including the time, date and place of each meeting of the executive organ shall be furnished to any unit owner who requests such information. Requests by a unit owner to be notified on a continual basis shall be made at least once a year in writing and include the unit owner's name, address, and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the unit owners' association's executive organ conducting the meeting.*

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of a unit owners' association's executive organ for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive organ.

Any unit owner may make an audio recording of any portion of a meeting required to be open. The executive organ conducting the meeting may adopt rules governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings.

If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two board members shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any board member participating in the meeting who is not physically present.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for the election of officers.

C. The executive organ may convene in ~~closed~~ executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant thereto for which a unit owner ~~or~~, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in ~~closed~~ executive session. The motion shall state specifically the purpose for the ~~closed~~ executive session. Reference to the motion and the stated purpose for the ~~closed~~ executive session shall be included in the minutes. The executive organ shall restrict the consideration of matters during ~~the closed~~ such portions of meetings to only ~~to~~ those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in ~~closed~~ executive session shall become effective unless the executive organ, following the ~~closed~~ executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive organ may limit the comments of unit owners to the topics listed on the meeting agenda.

§ 55-79.80:2. Assessment of charges for violations; suspension of services for failure to pay assessments; hearing.

A. The unit owners' association shall have the power, to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments which are more than sixty days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests or other invitees are responsible.

B. Before any such suspension or charges may be imposed, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

Notice of such hearing, *including the charges or other sanctions that may be imposed*, shall, at least fourteen days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address or addresses required for notices of meetings pursuant to § 55-79.75.

The amount of any charges so assessed shall not exceed fifty dollars for a single offense, or ten dollars per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55-79.84. *However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding ninety days.*

The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt

requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75 within three days of the hearing.

C. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

§ 55-79.81. Insurance.

(a) A. The condominium instruments may require the unit owners' association, or the executive organ or managing agent on behalf of such association, to obtain:

(1) 1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements.

(2) 2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium.

(3) 3. Such other policies as may be required by the condominium instruments, including, without limitation, workers' compensation insurance, liability insurance on motor vehicles owned by the association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

(b) B. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of ~~the last sentence~~ subsection A of § 55-79.75.

§ 55-79.84. Lien for assessments.

A. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The said lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. The unit owners' association, in order to perfect the lien given by this section, shall file before the expiration of ninety days from the time *the first* such assessment became due and payable in the clerk's office *of the circuit court* in the county or city in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

1. A description of the condominium unit in accordance with the provisions of § 55-79.47.
2. The name or names of the persons constituting the unit owners of that condominium unit.
3. The amount of unpaid assessments currently due or past due together with the date when each fell due.
4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinabove provided to record and index the same as provided in subsection B, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

D. No suit to enforce any lien perfected under subsection C shall be brought after twenty-four months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

E. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees, ~~together with~~ *of the prevailing party. If the association prevails, it may also recover* interest at the ~~maximum~~ *maximum lawful* legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, said lien shall be released in accordance with the provisions of § 55-66.3. *Any lien which is not so*

released shall subject the lien creditor to the penalty set forth in subdivision A (1) of § 55-66.3. For the purposes of that section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55-79.53.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within ten days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive organ, and every unit owner. Payment of a fee not exceeding ten dollars may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens, conducted in compliance with the following:

1. In addition to the advertisement required by subdivision 2, the unit owners' association shall give written notice of the time, date and place of any proposed sale in execution of the lien by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least thirty days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least thirty days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than fourteen days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than fourteen days prior to such sale, shall be a sufficient compliance with the requirement of notice.

2. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement which is no earlier than eight days following the first advertisement nor more than thirty days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the unit owners' association shall give such other further and different advertisement as the association finds appropriate.

3. In the event of postponement of sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

4. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

5. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the unit owners' association from any person for entry by announcement at the sale. Any person other than a member of the unit owners' association may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the unit owners' association, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as ten percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if

such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.