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SENATE BILL NO. 264

Offered January 18, 2000

A BILL to amend and reenact § 55-512 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-513.1, relating to restrictions on displaying certain flags by property owners' associations.

Patrons—Bolling, Martin, Schrock and Stosch; Delegates: Black, Davis and Parrish

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 55-512 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 55-513.1 as follows:

§ 55-512. Contents of association disclosure packet; other requirements.

A. Subject to the provisions of subsections C and F, the association shall make available to an owner or his authorized agent within fourteen days after receipt of a written request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the purchaser. The information contained in the association disclosure packet shall be current as of a specified date within thirty days of the date of the contract. If hand delivered, the written request and fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;

2. A statement of any expenditure of funds approved by the association or the board of directors which shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association and associated with the purchase, disposition and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. A statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial condition for the last fiscal year for which such statement is available;

7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased;

8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in subdivision 12 of this subsection;

10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

~~12.~~ 12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association; and

~~13.~~ 13. Certification, if applicable, that the association has filed with the Real Estate Board the annual report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real Estate Board and the expiration date of such filing.

Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.

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60 The disclosure packet, once received by the seller from the association, shall be delivered by the
61 seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the
62 purchaser of the lot. The disclosure packet required by this section, shall not, in and of itself, be deemed
63 a security within the meaning of § 13.1-501.

64 B. If more than six months have elapsed between the purchase contract date and the date of
65 settlement, the purchaser may submit a copy of the contract to the association with a request for
66 assurance that the information required by this section previously furnished remains materially
67 unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser
68 shall be provided with such assurances or such statement within ten days of the receipt of such request
69 by the association. The purchaser may be required to pay a fee for the preparation and issuance of the
70 requested assurances. The fee shall reflect the actual cost incurred by the association in providing such
71 assurances but shall not exceed fifty dollars. If settlement has not occurred and the purchaser has not
72 cancelled the contract in accordance with § 55-511, the purchaser may renew requests for assurances as
73 provided herein every six months.

74 C. The association may charge a fee for the preparation and issuance of the disclosure packet
75 required by this section. The fee shall reflect the actual cost of the preparation of the packet, but shall
76 not exceed \$100.

77 D. When a disclosure packet has been issued as required by this section, the association shall, as to
78 the purchaser, be bound by the statements set forth therein as to the status of the assessment account
79 and the status of the lot with respect to any violation of any of the instruments referred to in subdivision
80 44-12 of subsection A as of the date of the statement unless the purchaser had actual knowledge that the
81 contents of the disclosure packet were in error.

82 E. If the association has been requested to furnish the disclosure packet required by this section and
83 has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form
84 provided herein within fourteen days from the actual receipt of the request by an officer, director or
85 agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any
86 violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the
87 date of the request with respect to the subject lot. The association shall be liable to the seller in an
88 amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The
89 purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and
90 architectural guidelines of the association as to all matters arising after the date of the settlement of the
91 sale.

92 F. The contract disclosures required by § 55-511 and the disclosure packet required by this section
93 need not be provided in the case of:

- 94 1. A disposition of a lot by gift;
95 2. A disposition of a lot pursuant to court order if the court so directs;
96 3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
97 4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or
98 5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or
99 for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by
100 such person or entity. If such disclosures are not requested, a statement in the contract of sale that the
101 purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the
102 seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the
103 declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all
104 matters.

105 G. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the
106 sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the
107 packet to the purchaser.

108 *§ 55-513.1. Flag display; necessary supporting structures; affirmative defense.*

109 A. *Unless specifically prohibited by the association's rules and regulations or architectural guidelines*
110 *provided in the disclosure packet required pursuant to § 55-212, the association shall not prohibit any*
111 *lot owner from displaying the flag of (i) the United States, (ii) the Commonwealth, (iii) any active*
112 *branch of the armed forces of the United States, or (iv) any military valor or service award of the*
113 *United States.*

114 B. *In any action brought by the association under § 55-513, the lot owner shall be entitled to assert*
115 *as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags*
116 *or any flagpole or similar structure necessary to display such flags was not contained in the disclosure*
117 *packet required pursuant to § 55-512.*