

009050500

SENATE BILL NO. 721

Offered January 24, 2000

A *BILL to amend and reenact §§ 55-510, 55-510.1, 55-513 and 55-516 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 26 of Title 55 sections numbered 55-510.2 and 55-516.3, relating to property owners' associations.*

Patrons—Mims; Delegates: Albo, Devolites, May, McClure and O'Brien

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-510, 55-510.1, 55-513 and 55-516 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 26 of Title 55 sections numbered 55-510.2 and 55-516.3 as follows:

§ 55-510. Access to association records; meetings of the board of directors.

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. 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 association, including, but not limited to, the association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation, and aggregate salary information of employees of the association, shall be available for examination and copying by a member in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the association. 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 association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they 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- Transactions to purchase goods or services or for other commercial purposes, currently in or under negotiation;

4. 3. Pending or probable litigation. *Probable litigation means those instances where there has been a specific written threat of litigation from a party or the legal counsel of a party within the previous ninety days of the request;*

5- 4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant thereto;

5. ~~Communications with legal counsel or attorney work-product which relates to subdivisions 1 through 4;~~

6. Disclosure of information in violation of law;

7. Meeting minutes or other *confidential* records of an executive session of the board of directors held in accordance with § 55-510.1 C;

8. Documentation, correspondence or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board *in executive session*; or

9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. The 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 to a member in good standing under this section.

E. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer who shall, at least fourteen days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. Notice shall be sent by United States mail to all members at the address of their respective lots 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

INTRODUCED

SB721

60 member.

61 § 55-510.1. Meetings of the board of directors.

62 A. All meetings of the board of directors shall be open to all members of record. Minutes shall be
63 recorded and shall be available as provided in § 55-510 B.

64 B. Notice including the time, date and place of each meeting of the board of directors shall be
65 furnished to any member who requests such information. Requests by a member to be notified on a
66 continual basis shall be made at least once a year in writing and include the member's name, address,
67 and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be
68 given contemporaneously with the notice provided members of the association's board of directors
69 conducting the meeting.

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

74 Any member may make an audio recording of any portion of a meeting required to be open. The
75 board of directors conducting the meeting may adopt rules governing the placement and use of
76 equipment necessary for recording a meeting to prevent interference with the proceedings.

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

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

83 C. The board of directors may convene in closed session to consider personnel matters; consult with
84 legal counsel; discuss and consider contracts, ~~potential or~~ pending or probable litigation and matters
85 involving violations of the declaration or rules and regulations adopted pursuant thereto for which a
86 member, his family members, tenants, guests or other invitees are responsible; or discuss and consider
87 the personal liability of members to the association, upon the affirmative vote in an open meeting to
88 assemble in closed session. The motion shall state specifically the purpose for the closed session.
89 Reference to the motion and the stated purpose for the closed session shall be included in the minutes.
90 The board of directors shall restrict the consideration of matters during the closed portions of meetings
91 to only those purposes specifically exempted and stated in the motion. No contract, motion or other
92 action adopted, passed or agreed to in closed session shall become effective unless the board of
93 directors, following the closed session, reconvenes in open meeting and takes a vote on such contract,
94 motion or other action which shall have its substance reasonably identified in the open meeting. The
95 requirements of this section shall not require the disclosure of information in violation of law.

96 § 55-510.2. Participation in meetings by members; distribution of information.

97 A. *Subject to reasonable rules adopted by the board of directors, the board of directors shall provide*
98 *a designated period of time during a meeting to allow members an opportunity to comment on any*
99 *matter relating to the association. During a meeting at which the agenda is limited to specific topics or*
100 *at a special meeting, the board of directors may limit the comments of members to the topics listed on*
101 *the meeting agenda.*

102 B. *Subject to reasonable rules adopted by the board of directors, members may meet for the purpose*
103 *of considering and discussing the operation of and matters relating to the operation of the association*
104 *in any common areas or in any building or facility in the common areas that the board of directors*
105 *uses for scheduled meetings.*

106 C. *The board of directors shall not restrict a member from distributing or posting written*
107 *information or materials regarding the operation of or matters relating to the operation of the*
108 *association in any manner or place that the board of directors distributes or posts written information.*

109 § 55-513. Adoption and enforcement of rules.

110 A. The board of directors of the association shall have the power to establish, adopt, and enforce
111 rules and regulations with respect to use of the common areas and with respect to such other areas of
112 responsibility assigned to the association by the declaration, except where expressly reserved by the
113 declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably
114 published or distributed throughout the development. A majority of votes cast, in person or by proxy, at
115 a meeting convened in accordance with the provisions of the association's bylaws and called for that
116 purpose, shall repeal or amend any rule or regulation adopted by the board of directors. Rules and
117 regulations may be enforced by any method normally available to the owner of private property in
118 Virginia, including, but not limited to, application for injunctive relief or damages, during which the
119 court may award to the association court costs and reasonable attorneys' fees.

120 B. The board of directors of the association shall also have the power, to the extent the declaration
121 or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's

right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than sixty days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible. Before any such charges or suspension may be imposed, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents. Notice of a hearing shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least fourteen days prior to the hearing. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, ~~but~~ *and* shall not exceed fifty dollars for a single offense or ten dollars per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516.

§ 55-516. Lien for assessments.

A. Once perfected, the association shall have a lien on every lot for unpaid assessments *which equal or exceed the aggregate amount of \$1,000* levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under § 55-58.2 shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file before the expiration of twelve months from the time *the first* such assessment became due and payable in the clerk's office in the county or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association, or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;
2. A description of the lot;
3. The name or names of the persons constituting the owners of that lot;
4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;
5. The date of issuance of the memorandum;
6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and

7. A statement that the association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (§ 55-508 et seq.) of Title 55.

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

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable city or county. The notice shall be sent at least ten days before the actual filing date of the memorandum of lien.

D. 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, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No suit to enforce any lien perfected under subsection B 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 the 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.

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

183 G. When *partial or complete* payment or satisfaction is made of a debt secured by the lien perfected
184 by subsection B hereof, the lien shall be released *in part or in total* in accordance with the provisions of
185 § 55-66.3. For the purposes of § 55-66.3, the principal officer of the association, or any other officer or
186 officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

187 H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which
188 subsection A hereof creates a lien, maintainable pursuant to § 55-515.

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

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

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

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

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

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

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

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

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

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

235 b. The property owners' association may require of any bidder at any sale a cash deposit of as much
236 as ten percent of the sale price before his bid is received, which shall be refunded to him if the property
237 is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if
238 such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and
239 expenses of the sale, and the balance, if any, shall be retained by the property owners' association in
240 connection with that sale.

241 c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser
242 being required to see to the application of the proceeds, and apply the same in the following order: first,
243 to the reasonable expenses of sale; second, to the satisfaction of all taxes, levies and assessments, with
244 costs and interest; third, to the satisfaction of the lien for the 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 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 owner's equity, without actual notice thereof prior to distribution.

§ 55-516.3. *Investigations and proceedings by the Real Estate Board.*

A. *Whenever the Real Estate Board receives a written complaint which appears to state a valid claim, the Board shall make necessary public or private investigations in accordance with law within or outside of the Commonwealth to determine whether any declarant, its agents, employees or other representatives have violated or are about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.*

B. *The Board shall also in like manner and with like authority investigate written complaints against persons other than the declarant, its agents, employees or other representatives, and may impose a monetary penalty, not to exceed \$2,500 for each violation, if the agency determines that the respondent is guilty of the violation complained of. The penalty may be sued for and recovered in the name of the Commonwealth.*

C. *For the purpose of any investigation or proceeding under this chapter, the Board or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.*

D. *Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Board may apply to the Circuit Court of the City of Richmond for an order compelling compliance.*