

016127904

HOUSE BILL NO. 2515

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 55-509, 55-511 and 55-512 of the Code of Virginia, relating to delivery of association disclosure packets in property owners' associations.

Patron—Reid

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-509, 55-511 and 55-512 of the Code of Virginia are amended and reenacted as follows:

§ 55-509. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Complete disclosure packet" means the complete association disclosure packet that contains documents with the information required by § 55-512.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area in an amount in excess of \$150 per year per lot as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in an amount in excess of \$150 per year per lot as a regular annual assessment in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Summary disclosure packet" means a summary of the association disclosure packet prepared by the association that includes at least a copy of the declaration and the one page form developed by the Real Estate Board pursuant to § 54.1-2105.1.

§ 55-511. Contract disclosure statement; right of cancellation.

A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in the contract that (i) the lot is located within a development which is subject to the Virginia Property Owners' Association Act, (ii) the Act requires the seller to obtain from the property owners' association ~~an association~~ a summary disclosure packet and provide it to the purchaser, (iii) *the purchaser has an option to request a copy of the complete disclosure packet in lieu of the summary disclosure packet*, (iv) the purchaser may cancel the contract within three days after receiving the ~~association summary~~ disclosure packet or being notified that the ~~association summary~~ disclosure packet will not be available, and (v) the right to receive the ~~association summary~~ disclosure packet and the right to cancel the

INTRODUCED

HB2515

59 contract are waived conclusively if not exercised before settlement.

60 B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole
61 remedy is to cancel the contract prior to settlement.

62 C. The information contained in the ~~association~~ *summary* disclosure packet *and the complete*
63 *disclosure packet* shall be current as of a specified date within thirty days of the date of the contract.
64 The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or
65 before the date that the purchaser signs the contract, the purchaser receives the ~~association~~ *summary*
66 disclosure packet or is notified that the ~~association~~ *summary* disclosure packet will not be available; (ii)
67 within three days after receiving the ~~association~~ *summary* disclosure packet if the ~~association~~ *summary*
68 disclosure packet or notice that the ~~association~~ *summary* disclosure packet will not be available is hand
69 delivered; or (iii) within six days after the postmark date if the ~~association~~ *summary* disclosure packet or
70 notice that the ~~association~~ *summary* disclosure packet will not be available is sent to the purchaser by
71 United States mail. The purchaser may also cancel the contract at any time prior to settlement if the
72 purchaser has not been notified that the ~~association~~ *summary* disclosure packet will not be available and
73 the ~~association~~ *summary* disclosure packet is not delivered to the purchaser. Notice of cancellation shall
74 be hand delivered or sent by United States mail, return receipt requested, to the owner. Such
75 cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to
76 the purchaser.

77 D. Whenever any contract is canceled based on a failure to comply with subsection A or C or
78 pursuant to subsection B, any deposit or escrowed funds shall be returned within thirty days of the
79 cancellation, unless the parties to the contract agreed upon a shorter period.

80 E. Any rights of the purchaser to cancel the contract provided by this chapter are waived
81 conclusively if not exercised prior to settlement.

82 *F. The provisions of this section shall also apply to the complete disclosure packet.*

83 ~~F.~~ G. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may
84 not be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived.

85 § 55-512. Contents of association complete disclosure packet and summary disclosure packet; other
86 requirements.

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

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

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

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

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

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

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

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

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

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

119 10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
120 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. 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. 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.

B. A summary disclosure packet shall contain at least a photocopy of the declaration and a photocopy of the one page form developed by the Real Estate Board pursuant to § 54.1-2105.1.

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

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

~~B.~~ *D. If more than six months have elapsed between the purchase contract date and the date of settlement, the purchaser may submit a copy of the contract to the association with a request for assurance that the information required by this section previously furnished remains materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within ten days of the receipt of such request by the association. The purchaser may be required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the association in providing such assurances but shall not exceed ten cents per page copied, and in no event shall be more than fifty dollars. If settlement has not occurred and the purchaser has not cancelled the contract in accordance with § 55-511, the purchaser may renew requests for assurances as provided herein every six months.*

~~C.~~ *E. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. The fee shall reflect the actual cost of the preparation of the packet, but shall not exceed ten cents per page copied, and in no event shall be more than \$100.*

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

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

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

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

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