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## SENATE BILL NO. 1423

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws

Patron Prior to Substitute—Senator Lambert

Senate Amendments in [ ] — February 5, 2001

*A BILL to amend and reenact §§ 55-509.2, 55-510, 55-512 and 55-513.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-509.01, relating to the Virginia Property Owners' Association Act; transfer of declarant control; disclosure packet.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 55-509.2, 55-510, 55-512 and 55-513.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 55-509.01 as follows:**

*§ 55-509.01. Control of development by declarant.*

*The declaration may specify a period of declarant control of the property owner's association including authorization to appoint and remove some or all of the officers of the board of directors. The period of declarant control shall not extend beyond the period specified in the declaration or after three-fourths of lots as designated in the plan for development as approved by the locality or as amended from time to time have been conveyed [ as improved lots to owners in the association ] , whichever occurs first.*

*§ 55-509.2. Documents to be provided by declarant upon transfer of control.*

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed sixty days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available *and showing those portions of the development that are lots and common area*; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (vi) any contracts in which the association is a contracting party; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property.

If the association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

*§ 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. *The association shall also maintain a map of the development showing those portions of the development that are lots and common area.*

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. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. Probable litigation means those instances where there has been a

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60 specific threat of litigation from a party or the legal counsel of a party;

61 4. Matters involving state or local administrative or other formal proceedings before a government  
62 tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to  
63 § 55-513;

64 5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is  
65 protected by the attorney-client privilege or the attorney work product doctrine;

66 6. Disclosure of information in violation of law;

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

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

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

74 D. The association may impose and collect a charge, reflecting the actual and reasonable costs of  
75 materials and labor, prior to providing copies of any books and records to a member in good standing  
76 under this section.

77 E. Meetings of the association shall be held in accordance with the provisions of the bylaws at least  
78 once each year after the formation of the association. The bylaws shall specify an officer who shall, at  
79 least fourteen days in advance of any annual or regularly scheduled meeting, and at least seven days in  
80 advance of any other meeting, send to each member notice of the time, place, and purposes of such  
81 meeting. Notice shall be sent by United States mail to all members at the address of their respective lots  
82 and to such other addresses as any of them may have designated to such officer; or notice may be hand  
83 delivered by the officer, provided the officer certifies in writing that notice was delivered to the  
84 member.

85 § 55-512. Contents of association disclosure packet; other requirements.

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

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

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

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

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

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

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

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

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

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

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

120 11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to  
121 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. For as long as the association is under the control of the declarant, a statement or clear reference to the provisions in the declaration setting forth the plan for the transfer of control of the development to the owners including (i) the number of lots in the recorded subdivision, (ii) the current number of directors, (iii) the number of directors that are appointed by the declarant, and (iv) the method for determining the point that the transfer of control occurs from the declarant to the owners [ of improved lots in the association ] ;

13. 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

14. 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.

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. 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 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. 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 \$100.

D. When a disclosure packet has been issued as required 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. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the 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. The contract disclosures required by § 55-511 and the 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. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the

183 sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the  
184 packet to the purchaser.

185 § 55-513.1. Flag display; necessary supporting structures; affirmative defense.

186 A. Unless specifically prohibited by the association's rules and regulations or architectural guidelines  
187 provided in the disclosure packet *to the current owner and provided prior to the purchase of a lot by*  
188 *the current owner as* required pursuant to § 55-512, the association shall not prohibit any lot owner from  
189 displaying the flag of (i) the United States, (ii) the Commonwealth, (iii) any active branch of the armed  
190 forces of the United States, or (iv) any military valor or service award of the United States.

191 B. In any action brought by the association under § 55-513, the lot owner shall be entitled to assert  
192 as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags  
193 or any flagpole or similar structure necessary to display such flags was not contained in the disclosure  
194 packet *to the current lot owner and provided prior to the purchase of a lot by the current owner as*  
195 required pursuant to § 55-512.

196 **2. That § 55-509.01 of the first enactment shall only apply to declarations recorded on or after the**  
197 **effective date of act.**

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