

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 421

*An Act to amend and reenact § 55-79.83 of the Code of Virginia, relating to the Condominium Act; authority to levy additional assessments.*

[H 2216]

Approved March 16, 2003

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

**1. That § 55-79.83 of the Code of Virginia is amended and reenacted as follows:**

§ 55-79.83. Liability for common expenses.

A. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

B. To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases. The executive organ may impose reasonable user fees.

C. To the extent that the condominium instruments expressly so provide, (i) any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved and (ii) any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C hereof shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § 55-79.77, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

*E. Except to the extent otherwise provided in the condominium instruments, if the executive organ determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive organ shall have the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive organ shall give written notice of any additional assessment to the unit owners stating the amount, reasons therefor, and the due date for payment of such assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.*

*All unit owners shall be obligated to pay the additional assessment unless the unit owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the additional assessment. No director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.*

~~E.~~ F. It remains the policy of this section that neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner thereof.

~~F.~~ G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby validated notwithstanding noncompliance with the first sentence of subsection D hereof, if they provide instead that the amount of all common expenses not specially assessed pursuant to subsection A, B or C

hereof shall be assessed against the condominium units in proportion to their respective undivided interests in the common elements.