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HOUSE BILL NO. 2217

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 55-508, 55-509, and 55-511 of the Code of Virginia, relating to the Property Owners' Association Act; applicability.

 Patron—Suit

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-508, 55-509, and 55-511 of the Code of Virginia are amended and reenacted as follows:

§ 55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration, as defined herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the former Subdivided Land Sales Act (§ 55-336 et seq.). For the purposes of this chapter, as used in the former Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and control of a development shall be deemed to correspond with the term "declaration";

"Developer" shall be deemed to correspond with the term "declarant";

"Lot" shall be deemed to correspond with the term "lot"; and

"Subdivision" shall be deemed to correspond with the term "development."

This chapter shall be deemed to supersede the Subdivided Land Sales Act, and no development shall be established under the latter on or after July 1, 1998. This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998.

The provisions of this chapter which exclude the applicability of this chapter to developments which impose on the association maintenance or operational responsibilities or on the owners or occupants of lots a mandatory payment of money less than \$150 per year per lot as a regular annual assessment shall not be applied retroactively to any development subject to a declaration recorded prior to July 1, 1991 shall apply to any association that is registered with the Real Estate Board in accordance with § 55-516.1.

This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ 55-79.39 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public.

§ 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.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"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

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59 and designated as common area in the declaration.

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

62 "Declaration" means any instrument, however denominated, recorded among the land records of the
63 county or city in which the development or any part thereof is located, that either (i) imposes on the
64 association maintenance or operational responsibilities for the common area ~~in an amount in excess of~~
65 ~~\$150 per year per lot~~ as a regular annual assessment or (ii) creates the authority in the association to
66 impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory
67 payment of money ~~in an amount in excess of \$150 per year per lot~~ as a regular annual assessment in
68 connection with the provision of maintenance and/or services for the benefit of some or all of the lots,
69 the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or
70 supplement to the instruments described in this definition. "Declaration" shall not include a declaration
71 of a condominium, real estate cooperative, time-share project or campground.

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

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

81 "Meeting" or "meetings" means the formal gathering of the board of directors where the business of
82 the association is discussed or transacted.

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

85 § 55-511. Contract disclosure statement; right of cancellation.

86 A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in the
87 contract that (i) the lot is located within a development which is subject to the Virginia Property
88 Owners' Association Act; (ii) the Act requires the seller to obtain from the property owners' association
89 an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the
90 contract within three days after receiving the association disclosure packet or being notified that the
91 association disclosure packet will not be available; (iv) if the purchaser has received the association
92 disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance
93 with § 55-512; and (v) the right to receive the association disclosure packet and the right to cancel the
94 contract are waived conclusively if not exercised before settlement.

95 *For purposes of this subsection, a packet is not available if (i) the association is not registered with*
96 *the Real Estate Board in accordance with § 55-516.1, (ii) the seller has made a written request to the*
97 *association that the packet be provided and no such packet has been received within 14 days in*
98 *accordance with subsection E of § 55-512, or (iii) written notice has been provided by the association*
99 *that a packet is not available.*

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

102 C. The information contained in the association disclosure packet shall be current as of a date
103 specified on the association disclosure packet obtained by the seller in accordance with this section. The
104 purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the
105 date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is
106 notified that the association disclosure packet will not be available; (ii) within three days after receiving
107 the association disclosure packet if the association disclosure packet or notice that the association
108 disclosure packet will not be available is hand delivered or delivered with the consent of the purchaser
109 by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the
110 association disclosure packet or notice that the association disclosure packet will not be available is sent
111 to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to
112 settlement if the purchaser has not been notified that the association disclosure packet will not be
113 available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation
114 shall be hand delivered or sent by United States mail, return receipt requested, to the owner or his agent.
115 Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly
116 to the purchaser. The association may also send the resale certificate by electronic means with the
117 consent of the seller and the purchaser.

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

- 121** E. Any rights of the purchaser to cancel the contract provided by this chapter are waived
122 conclusively if not exercised prior to settlement.
123 F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may not
124 be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived.