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HOUSE BILL NO. 443

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 54.1-2105.1, 55-79.97, and 55-512 of the Code of Virginia, relating to the Condominium and Property Owners' Association Act; resale disclosures.

 Patron—Suit

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2105.1, 55-79.97, and 55-512 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2105.1. Other powers and duties of the Real Estate Board.

In addition to the provisions of § 54.1-2105, the Board shall:

1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1;

3. Develop a residential property disclaimer statement form and a residential property disclosure statement form for use in accordance with the provisions of § 55-519; ~~and~~

4. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to § 55-512, which form shall summarize the unique characteristics of property owners' associations generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including, but not limited to, the obligation of a lot owner to pay regular annual or special assessments to the association, and the penalty for failure/refusal to pay such assessments; the purposes for which such assessments may be used; and the importance the declaration of restrictive covenants and other governing documents play in association living; *and*

5. *Develop and disseminate a one-page form to accompany the resale certificate required pursuant to § 55-79.97, which form shall summarize the unique characteristics of condominiums generally and shall make known to prospective purchasers the unusual and material circumstances affecting a unit owner in a condominium, including, but not limited to, the obligation of a unit owner to pay regular annual or special assessments to the condominium association, and the penalty for failure/refusal to pay such assessments; the purposes for which such assessments may be used; and the importance the condominium instruments and other governing documents play in condominium living.*

§ 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection J and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate, (iv) the purchaser has a right to request an update of the resale certificate in accordance with subsection D, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

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

C. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered or delivered with the consent of the purchaser by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be hand delivered or sent by United States mail, return receipt requested, to the unit owner selling the unit or his agent. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser. The unit owners' association may also send the resale certificate by electronic means with the consent of the seller and the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and,

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59 if applicable, an appropriate statement pursuant to § 55-79.85;

60 2. A statement of any expenditure of funds approved by the unit owners' association or the executive
61 organ which shall require an assessment in addition to the regular assessment during the current or the
62 immediately succeeding fiscal year;

63 3. A statement, including the amount, of all assessments and any other fees or charges currently
64 imposed by the unit owners' association and associated with the purchase, disposition and maintenance
65 of the condominium unit and the use of the common elements, and the status of the account;

66 4. A statement whether there is any other entity or facility to which the unit owner may be liable for
67 fees or other charges;

68 5. The current reserve study report or a summary thereof, a statement of the status and amount of
69 any reserve or replacement fund and any portion of the fund designated for any specified project by the
70 executive organ;

71 6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit
72 owners' association and a copy of the statement of its financial condition for the last fiscal year for
73 which a statement is available;

74 7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit
75 owners' association is a party which either could or would have a material impact on the association or
76 the unit owners or which relates to the unit being purchased;

77 8. A statement setting forth what insurance coverage is provided for all unit owners by the unit
78 owners' association, including any fidelity bond maintained by the unit owners' association, and what
79 additional insurance coverage would normally be secured by each individual unit owner;

80 9. A statement that any improvements or alterations made to the unit, or the limited common
81 elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

82 10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the
83 unit owners' association and the amendments thereto;

84 11. A statement of whether the condominium or any portion thereof is located within a development
85 subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

86 12. A copy of the notice given to the unit owner by the unit owners' association of any current or
87 pending rule or architectural violation;

88 13. Certification, if applicable, that the association has filed with the Real Estate Board the annual
89 report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real
90 Estate Board and the expiration date of such filing; and

91 14. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

92 15. A copy of the fully completed one-page cover sheet developed by the Real Estate Board pursuant
93 to § 54.1-2105.1;

94 16. A statement of whether (i) improvements to the common elements have been substantially
95 completed; (ii) the condominium is subject to additional expansion, and if so, the number of additional
96 units to be built; and (iii) the condominium is a conversion of an existing building;

97 17. A statement of the date that control of the condominium was transferred to the unit owners'
98 association by the declarant;

99 18. A statement of the total number of units in the condominium, including the number of units (i)
100 under contract, (ii) sold and closed, (iii) rented, and (iv) whether any one person or entity owns more
101 than one unit, and if so, how many each own;

102 19. A statement of whether there are any adverse environmental factors affecting the condominium as
103 a whole or as individual units;

104 20. A statement of whether the condominium instruments include any restrictions on the sale of a
105 unit that would limit the free transferability of title;

106 21. A statement, where title to a unit is acquired by foreclosure or by deed in lieu, of whether the
107 purchaser is responsible for delinquent assessments; and

108 22. A statement of whether any part of the condominium is or may be used for commercial purposes.

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

111 The resale certificate, once received by the owner from the unit owners' association, shall be
112 delivered by the owner to the purchaser. The unit owners' association shall have no obligation to deliver
113 the resale certificate to the purchaser of the unit. The resale certificate shall not, in and of itself, be
114 deemed a security within the meaning of § 13.1-501.

115 D. The purchaser may submit a copy of the contract to the unit owners' association with a request
116 for assurance that statements previously furnished pursuant to subsection C remain materially unchanged,
117 or, if there have been material changes, a statement specifying such changes. The purchaser shall be
118 provided with such assurances or such statement within ten 10 days of the receipt of such request by the
119 unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for
120 the resale certificate, if any. Any fee shall reflect the actual cost incurred by the unit owners' association

in providing the assurances, but shall not exceed ~~ten~~10 cents per page in copying costs or a total of ~~fifty~~ ~~dollars~~\$50 for all costs incurred in updating the resale certificate. The unit owners' association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection.

E. In the absence of a written agreement to the contrary, the failure of the unit owners' association to provide the statement required by subsection D or the disclosure by such statement that there have been one or more material changes shall render the purchase contract void at the option of the purchaser.

F. The unit owners' association shall furnish the resale certificate upon the written request of any unit owner within ~~fourteen~~14 days of the receipt of such request. Payment of the actual costs of preparing the resale certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but the total fee shall not exceed ~~ten~~10 cents per page in copying costs or a total of \$100, including and not in addition to, any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85, for all costs incurred in preparing the resale certificate, except that the unit owners' association, upon mutual agreement with the seller, may collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a rush fee, not to exceed ~~twenty-five dollars~~\$25, for furnishing the resale certificate within three business days from the actual receipt of the request, (ii) the actual cost of any mailing or delivery requested by the seller pursuant to this subsection, and (iii) any actual cost incurred at the request and with the consent of the purchaser. Neither the unit owners' association nor its management agent, if any, shall require cash or certified funds unless the unit owner is delinquent in any payments due to the unit owners' association in excess of ~~thirty~~30 days or if a check of the unit owner made payable to the unit owners' association was returned for insufficient funds within the last six months.

G. When a resale certificate has been issued as required by this section, the unit owners' 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 unit with respect to any violation of the condominium instruments as of the date of the resale certificate unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

H. If the unit owners' association has been requested to furnish the resale certificate required by this section and has been paid the appropriate fee, its failure to provide the resale certificate in substantially the form provided herein within ~~fourteen~~14 days from the actual receipt of the request by an officer, director or agent of the unit owners' association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the condominium instruments, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The unit owners' 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 condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale. The settlement agent, as defined in § 6.1-2.20, when transmitting funds to a unit owners' association or otherwise upon request, shall provide the unit owners' association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise prohibited, shall satisfy these requirements.

I. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

J. The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs; or
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure.

K. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

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

A. Subject to the provisions of subsections C and F, the association shall make available to an owner or his authorized agent within ~~fourteen~~14 days after receipt of a written request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the purchaser. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request and fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated

182 and the name and address of its registered agent in Virginia;

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

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

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

191 5. The current reserve study report or summary thereof, a statement of the status and amount of any
192 reserve or replacement fund and any portion of the fund allocated by the board of directors for a
193 specified project;

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

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

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

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

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

208 11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
209 display any flag on the owner's lot including, but not limited to reasonable restrictions as to the size,
210 place and manner of placement or display of such flag and the installation of any flagpole or similar
211 structure necessary to display such flag;

212 12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any
213 rules and regulations or architectural guidelines adopted by the association;

214 13. A copy of the notice given to the lot owner by the association of any current or pending rule or
215 architectural violation;

216 14. A copy of the fully completed one-page cover sheet developed by the Real Estate Board pursuant
217 to § 54.1-2105.1; and

218 15. Certification, if applicable, that the association has filed with the Real Estate Board the annual
219 report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real
220 Estate Board and the expiration date of such filing;

221 16. *A statement of whether the development or any portion thereof is located within a development*
222 *subject to the Condominium Act (§ 55-79.49 et seq.) of Chapter 4.2 of this title;*

223 17. *A statement of whether (i) improvements to the common areas have been substantially completed*
224 *and (ii) the development is subject to additional expansion, and if so, the number of additional lots to*
225 *be added;*

226 18. *A statement of the date that control of the association was transferred to the association by the*
227 *declarant;*

228 19. *A statement of the total number of lots in the development, including the number of lots (i) under*
229 *contract, (ii) sold and closed, (iii) rented, and (iv) whether any one person or entity owns more than*
230 *one lot, and if so, how many each own;*

231 20. *A statement of whether there are any adverse environmental factors affecting the development as*
232 *a whole or as individual lots;*

233 21. *A statement of whether the current declaration, the association's articles of incorporation and*
234 *bylaws, and any rules and regulations adopted by the association include any restrictions on the sale of*
235 *a lot which would limit the free transferability of title;*

236 22. *A statement, where title to a lot is acquired by foreclosure or by deed in lieu, of whether the*
237 *purchaser is responsible for delinquent assessments; and*

238 23. *A statement of whether any part of the development is or may be used for commercial purposes.*

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

241 The disclosure packet, once received by the seller from the association, shall be delivered by the
242 seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the
243 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. 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~~10 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~~10 cents per page of copying costs or a total of ~~fifty dollars~~\$50 for all costs incurred in updating the association disclosure packet. The association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection.

C. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but shall not exceed ~~ten~~10 cents per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet, except that the association, upon mutual agreement with the seller, may collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a rush fee, not to exceed ~~twenty-five dollars~~\$25, for furnishing the resale certificate within three business days from the actual receipt of the request, (ii) the actual cost of any mailing or delivery requested by the seller pursuant to this subsection, and (iii) any actual cost incurred at the request and with the consent of the purchaser. Neither the association nor its management agent, if any, shall require cash or certified funds unless the lot owner is delinquent in any payments due to the association in excess of ~~thirty~~30 days or if a check of the lot owner made payable to the association was returned for insufficient funds within the last six months.

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~~14 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. The settlement agent, as defined in § 6.1-2.20, when transmitting funds to the association or otherwise upon request, shall provide the association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise prohibited, shall satisfy these requirements.

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