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SENATE BILL NO. 449

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 55-79.97 and 55-512 of the Code of Virginia, relating to the Virginia Property Owners' Association and Condominium Acts; fees related to providing statements of assurance, resale certificates or disclosure packets.

Patron—Whipple

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-79.97 and 55-512 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

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

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

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

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

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

9. A statement that any improvements or alterations made to the unit, or the limited common

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59 elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

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

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

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

66 13. Certification, if applicable, that the association has filed with the Real Estate Board the annual
67 report required by § ~~55-516.1~~ 55-79.93:1; which certification shall indicate the filing number assigned
68 by the Real Estate Board and the expiration date of such filing; and

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

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

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

76 D. The *unit owner or purchaser* may submit a copy of the contract to the unit owners' association
77 with a request for assurance that statements previously furnished pursuant to subsection C remain
78 materially unchanged, or, if there have been material changes, a statement specifying such changes. The
79 *unit owner or purchaser* shall be provided with such assurances or such statement within ~~ten~~10 days of
80 the receipt of such request by the unit owners' association. The *unit owner or purchaser* may be required
81 to pay the ~~same~~ fee charged a unit owner for *preparation of the resale certificate, as permitted by*
82 *subsection F*, if any. Any fee shall reflect the actual cost incurred by the unit owners' association in
83 providing the assurances, but shall not exceed ~~ten~~ 15 cents per page in copying costs or a total of ~~fifty~~
84 ~~dollars~~ \$100 for all costs incurred in ~~updating the resale certificate~~ *providing the assurances*. The unit
85 owners' association may also collect from the purchaser the actual costs incurred of any mailing or
86 delivery requested by the purchaser pursuant to this subsection.

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

90 F. The unit owners' association shall furnish the resale certificate upon the written request of any unit
91 owner within ~~fourteen~~14 days of the receipt of such request. Payment of the actual costs of preparing
92 the resale certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but
93 the total fee shall not exceed ~~ten~~ 15 cents per page in copying costs or a total of ~~\$100~~ \$150, including
94 and not in addition to, any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85, for all
95 costs incurred in preparing the resale certificate, except that the unit owners' association, upon ~~mutual~~
96 ~~the agreement with of the seller~~*unit owner*, may collect for actual costs incurred, in addition to any fee
97 charged pursuant to this subsection (i) a rush fee, not to exceed ~~twenty-five dollars~~\$25, for furnishing
98 the resale certificate within three business days from the actual receipt of the request, (ii) the actual cost
99 of any mailing or delivery requested by the ~~seller~~ *unit owner* pursuant to this subsection, and (iii) any
100 actual cost incurred at the request and with the consent of the ~~purchaser~~ *unit owner*. Neither the unit
101 owners' association nor its management agent, if any, shall require cash or certified funds unless the unit
102 owner is delinquent in any payments due to the unit owners' association in excess of ~~thirty~~30 days or if
103 a check of the unit owner made payable to the unit owners' association was returned for insufficient
104 funds within the last six months.

105 G. When a resale certificate has been issued as required by this section, the unit owners' association
106 shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment
107 account and the status of the unit with respect to any violation of the condominium instruments as of
108 the date of the resale certificate unless the purchaser had actual knowledge that the contents of the resale
109 certificate were in error.

110 H. If the unit owners' association has been requested to furnish the resale certificate required by this
111 section and has been paid the appropriate fee, its failure to provide the resale certificate in substantially
112 the form provided herein within ~~fourteen~~14 days from the actual receipt of the request by an officer,
113 director or agent of the unit owners' association shall be deemed a waiver of any claim for delinquent
114 assessments or of any violation of the condominium instruments, rules and regulations, or architectural
115 guidelines existing as of the date of the request with respect to the subject unit. The unit owners'
116 association shall be liable to the seller in an amount equal to the actual damages sustained by the seller
117 in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the
118 condominium instruments, rules and regulations, and architectural guidelines of the unit owners'
119 association as to all matters arising after the date of the settlement of the sale. The settlement agent, as
120 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 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 and the name and address of its registered agent in Virginia;

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

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

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

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

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

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

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

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

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

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

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

15. Certification, if applicable, that the association has filed with the Real Estate Board the annual

182 report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real
183 Estate Board and the expiration date of such filing.

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

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

190 B. The *lot owner or purchaser* may submit a copy of the contract to the association with a request
191 for assurance that the information required by this section previously furnished remains materially
192 unchanged, or, if there have been material changes, a statement specifying such changes. The *lot owner*
193 *or purchaser* shall be provided with such assurances or such statement within ten days of the receipt of
194 such request by the association. The *lot owner or purchaser* may be required to pay a fee for the
195 preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the
196 association in providing such assurances but shall not exceed ~~ten~~ 15 cents per page of copying costs or
197 a total of ~~fifty~~ 100 dollars for all costs incurred in updating the association disclosure packet. The
198 association may also collect from the purchaser the actual costs incurred of any mailing or delivery
199 requested by the purchaser pursuant to this subsection.

200 C. The association may charge a fee for the preparation and issuance of the disclosure packet
201 required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but shall
202 not exceed ~~ten~~ 15 cents per page of copying costs or a total of ~~\$400~~150 for all costs incurred in
203 preparing the association disclosure packet, except that the association, upon mutual agreement with the
204 ~~seller~~ *lot owner*, may collect for actual costs incurred, in addition to any fee charged pursuant to this
205 subsection (i) a rush fee, not to exceed ~~twenty-five dollars~~ \$25, for furnishing the ~~resale certificate~~
206 *disclosure packet* within three business days from the actual receipt of the request, (ii) the actual cost of
207 any mailing or delivery requested by the ~~seller~~ *lot owner* pursuant to this subsection, and (iii) any actual
208 cost incurred at the request and with the consent of the ~~purchaser~~ *lot owner*. Neither the association nor
209 its management agent, if any, shall require cash or certified funds unless the lot owner is delinquent in
210 any payments due to the association in excess of thirty days or if a check of the lot owner made
211 payable to the association was returned for insufficient funds within the last six months.

212 D. When a disclosure packet has been issued as required by this section, the association shall, as to
213 the purchaser, be bound by the statements set forth therein as to the status of the assessment account
214 and the status of the lot with respect to any violation of any of the instruments referred to in subdivision
215 12 of subsection A as of the date of the statement unless the purchaser had actual knowledge that the
216 contents of the disclosure packet were in error.

217 E. If the association has been requested to furnish the disclosure packet required by this section and
218 has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form
219 provided herein within fourteen days from the actual receipt of the request by an officer, director or
220 agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any
221 violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the
222 date of the request with respect to the subject lot. The association shall be liable to the seller in an
223 amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The
224 purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and
225 architectural guidelines of the association as to all matters arising after the date of the settlement of the
226 sale. The settlement agent, as defined in § 6.1-2.20, when transmitting funds to the association or
227 otherwise upon request, shall provide the association with (i) the name of the seller, (ii) the name and
228 address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a
229 brief explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement
230 statement, unless otherwise prohibited, shall satisfy these requirements.

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

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

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