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**SENATE BILL NO. 503**

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact §§ 55-79.84 and 55-516 of the Code of Virginia, relating to the Virginia Condominium Act and the Virginia Property Owners Association Act; foreclosure on liens.*

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 Patron—Mims
 

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 Referred to Committee on General Laws
 

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**Be it enacted by the General Assembly of Virginia:****1. That §§ 55-79.84 and 55-516 of the Code of Virginia are amended and reenacted as follows:**

§ 55-79.84. Lien for assessments.

A. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The said lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. The unit owners' association, in order to perfect the lien given by this section, shall file before the expiration of ~~ninety~~ 90 days from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

1. A description of the condominium unit in accordance with the provisions of § 55-79.47.
2. The name or names of the persons constituting the unit owners of that condominium unit.
3. The amount of unpaid assessments currently due or past due together with the date when each fell due.
4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinabove provided to record and index the same as provided in subsection B, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

D. No suit to enforce any lien perfected under subsection C shall be brought after twenty-four months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

E. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, said lien shall be released in accordance with the provisions of § 55-66.3. Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A (1) of § 55-66.3. For the purposes of that section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55-79.53.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the

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SB503

59 disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount  
60 of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the  
61 principal officer of the unit owners' association or to such other officer as the condominium instruments  
62 may specify. Failure to furnish or make available such a statement within ten days of the receipt of such  
63 request shall extinguish the lien created by subsection A as to the condominium unit involved. Such  
64 statement shall be binding on the unit owners' association, the executive organ, and every unit owner.  
65 Payment of a fee not exceeding ten dollars may be required as a prerequisite to the issuance of such a  
66 statement if the condominium instruments so provide.

67 1. ~~At any time after~~ *Within 24 months of* perfecting the lien pursuant to this section, the unit owners'  
68 association may sell the unit at public sale, subject to prior liens, conducted in compliance with the  
69 following:

70 1. In addition to the advertisement required by subdivision 2, the unit owners' association shall give  
71 written notice of the time, date and place of any proposed sale in execution of the lien by personal  
72 delivery or by mail to (i) the present owner of the property to be sold at his last known address as such  
73 owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a  
74 note against the property secured by a deed of trust recorded at least ~~thirty~~ 30 days prior to the proposed  
75 sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured  
76 by a deed of trust provided the assignment and address of the assignee are likewise recorded at least  
77 ~~thirty~~ 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing  
78 the same information to the owner by certified or registered mail no less than ~~fourteen~~ 14 days prior to  
79 such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by  
80 ordinary mail no less than ~~fourteen~~ 14 days prior to such sale, shall be a sufficient compliance with the  
81 requirement of notice.

82 2. The advertisement of sale by the unit owners' association shall be in a newspaper having a general  
83 circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to  
84 the following provisions:

85 a. The unit owners' association shall advertise once a week for four successive weeks; however, if  
86 the property or some portion thereof is located in a city or in a county immediately contiguous to a city,  
87 publication of the advertisement five different days, which may be consecutive days, shall be deemed  
88 adequate. The sale shall be held on any day following the day of the last advertisement ~~which~~ *that* is no  
89 earlier than eight days following the first advertisement nor more than ~~thirty~~ 30 days following the last  
90 advertisement.

91 b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or  
92 where the type of property being sold is generally advertised for sale. The advertisement of sale, in  
93 addition to such other matters as the unit owners' association finds appropriate, shall set forth a  
94 description of the property to be sold, which description need not be as extensive as that contained in  
95 the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the  
96 general location of the property with reference to streets, routes, or known landmarks. Where available,  
97 tax map identification may be used but is not required. The advertisement shall also include the date,  
98 time, place, and terms of sale and the name of the unit owners' association. It shall set forth the name,  
99 address and telephone number of the representative, agent, or attorney who may be able to respond to  
100 inquiries concerning the sale.

101 c. In addition to the advertisement required by subdivisions a and b above, the unit owners'  
102 association shall give such other further and different advertisement as the association finds appropriate.

103 3. In the event of postponement of sale, which postponement shall be at the discretion of the unit  
104 owners' association, advertisement of such postponed sale shall be in the same manner as the original  
105 advertisement of sale.

106 4. Failure to comply with the requirements for advertisement contained in this section shall, upon  
107 petition, render a sale of the property voidable by the court.

108 5. In the event of a sale, the unit owners' association shall have the following powers and duties:

109 a. Written one-price bids may be made and shall be received by the unit owners' association from  
110 any person for entry by announcement at the sale. Any person other than a member of the unit owners'  
111 association may bid at the foreclosure sale, including a person who has submitted a written one-price  
112 bid. Upon request to the unit owners' association, any other bidder in attendance at a foreclosure sale  
113 shall be permitted to inspect written bids.

114 b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as  
115 ~~ten~~ 10 percent of the sale price before his bid is received, which shall be refunded to him if the property  
116 is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if  
117 such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and  
118 expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in  
119 connection with that sale.

120 c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being

required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

*J. No action to foreclose a lien perfected pursuant to subsection I shall be instituted within 24 months from the time when the memorandum of lien was recorded.*

§ 55-516. Lien for assessments.

A. Once perfected, the association shall have a lien on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under § 55-58.2 shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file before the expiration of twelve months from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association, or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;
2. A description of the lot;
3. The name or names of the persons constituting the owners of that lot;
4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;
5. The date of issuance of the memorandum;
6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and

7. A statement that the association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (§ 55-508 et seq.) of Title 55.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinafter provided to record and index the same as provided in subsection D, in the names of the persons identified therein as well as in the name of the association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable city or county. The notice shall be sent at least ten days before the actual filing date of the memorandum of lien.

D. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No suit to enforce any lien perfected under subsection B shall be brought after twenty-four months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein the petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

F. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and reasonable attorney's fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B hereof, the lien shall be released in accordance with the provisions of § 55-66.3. Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A (1) of § 55-66.3. For the purposes of § 55-66.3, the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which

182 subsection A hereof creates a lien, maintainable pursuant to § 55-515.

183 1. ~~At any time after~~ *Within 24 months after* perfecting the lien pursuant to this section, the property  
184 owners' association may sell the unit at public sale, subject to prior liens, conducted in compliance with  
185 the following:

186 1. In addition to the advertisement required by subdivision 2, the property owners' association shall  
187 give written notice of the time, date and place of any proposed sale in execution of the lien by personal  
188 delivery or by mail to (i) the present owner of the property to be sold at his last known address as such  
189 owner and address appear in the records of the property owners' association, (ii) any lienholder who  
190 holds a note against the property secured by a deed of trust recorded at least ~~thirty~~ 30 days prior to the  
191 proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note  
192 secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at  
193 least ~~thirty~~ 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice  
194 containing the same information to the owner by certified or registered mail no less than ~~fourteen~~ 14  
195 days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum  
196 of lien, by ordinary mail no less than ~~fourteen~~ 14 days prior to such sale, shall be a sufficient  
197 compliance with the requirement of notice.

198 2. The advertisement of sale by the property owners' association shall be in a newspaper having a  
199 general circulation in the city or county wherein the property to be sold, or any portion thereof, lies  
200 pursuant to the following provisions:

201 a. The property owners' association shall advertise once a week for four successive weeks; however,  
202 if the property or some portion thereof is located in a city or in a county immediately contiguous to a  
203 city, publication of the advertisement five different days, which may be consecutive days, shall be  
204 deemed adequate. The sale shall be held on any day following the day of the last advertisement which is  
205 no earlier than eight days following the first advertisement nor more than ~~thirty~~ 30 days following the  
206 last advertisement.

207 b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or  
208 where the type of property being sold is generally advertised for sale. The advertisement of sale, in  
209 addition to such other matters as the property owners' association finds appropriate, shall set forth a  
210 description of the property to be sold, which description need not be as extensive as that contained in  
211 the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the  
212 general location of the property with reference to streets, routes, or known landmarks. Where available,  
213 tax map identification may be used but is not required. The advertisement shall also include the date,  
214 time, place, and terms of sale and the name of the property owners' association. It shall set forth the  
215 name, address and telephone number of the representative, agent, or attorney who may be able to  
216 respond to inquiries concerning the sale.

217 c. In addition to the advertisement required by subdivisions a and b above, the property owners'  
218 association shall give such other further and different advertisement as the association finds appropriate.

219 3. In the event of postponement of sale, which postponement shall be at the discretion of the  
220 property owners' association, advertisement of such postponed sale shall be in the same manner as the  
221 original advertisement of sale.

222 4. Failure to comply with the requirements for advertisement contained in this section shall, upon  
223 petition, render a sale of the property voidable by the court.

224 5. In the event of a sale, the property owners' association shall have the following powers and duties:

225 a. Written one-price bids may be made and shall be received by the property owners' association  
226 from any person for entry by announcement at the sale. Any person other than a member of the  
227 property owners' association may bid at the foreclosure sale, including a person who has submitted a  
228 written one-price bid. Upon request to the property owners' association, any other bidder in attendance at  
229 a foreclosure sale shall be permitted to inspect written bids.

230 b. The property owners' association may require of any bidder at any sale a cash deposit of as much  
231 as ten percent of the sale price before his bid is received, which shall be refunded to him if the property  
232 is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if  
233 such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and  
234 expenses of the sale, and the balance, if any, shall be retained by the property owners' association in  
235 connection with that sale.

236 c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser  
237 being required to see to the application of the proceeds, and apply the same in the following order: first,  
238 to the reasonable expenses of sale; second, to the satisfaction of all taxes, levies and assessments, with  
239 costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the  
240 satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the  
241 residue of the proceeds to the owner or his assigns; provided, however, that the association as to such  
242 residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the  
243 owner's equity, without actual notice thereof prior to distribution.

**244**     *J. No action to foreclose a lien perfected pursuant to subsection I shall be instituted within 24*  
**245**     *months from the time when the memorandum of lien was recorded.*

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SB503