

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 317

An Act to amend and reenact §§ 15.2-852, 15.2-2289, and 55-79.43 of the Code of Virginia, relating to the Virginia Condominium Act; authorization of condominium association to be applicants in land use matters; disclosure.

[S 430]

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-852, 15.2-2289, and 55-79.43 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-852. Disclosures in land use proceedings.

A. Each individual member of the board of supervisors, the planning commission, and the board of zoning appeals in any proceeding before each such body involving an application for a special exception or variance or involving an application for amendment of a zoning ordinance, which does not constitute the adoption of a comprehensive zoning plan or ordinance applicable throughout the county, shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of any business or financial relationship which such member has, or has had within the 12-month period prior to such hearing, (i) with the applicant in such case, or (ii) with the title owner, contract purchaser or lessee of the land that is the subject of the application, *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or (iii) if any of the foregoing is a trustee (other than a trustee under a corporate mortgage or deed of trust securing one or more issues of corporate mortgage bonds), with any trust beneficiary having an interest in such land, or (iv) with the agent, attorney or real estate broker of any of the foregoing. For the purpose of this subsection, "business or financial relationship" means any relationship (other than any ordinary customer or depositor relationship with a retail establishment, public utility or bank) such member, or any member of the member's immediate household, either directly or by way of a partnership in which any of them is a partner, employee, agent or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class, has, or has had within the 12-month period prior to such hearing, with the applicant in the case, or with the title owner, contract purchaser or lessee of the subject land, *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or with any of the other persons above specified. For the purpose of this subsection "business or financial relationship" also means the receipt by the member, or by any person, firm, corporation or committee in his behalf from the applicant in the case or from the title owner, contract purchaser or lessee of the subject land, *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or from any of the other persons above specified, during the 12-month period prior to the hearing in such case, of any gift or donation having a value of more than \$100, singularly or in the aggregate.

If at the time of the hearing in any such case such member has a business or financial interest with the applicant in the case or with the title owner, contract purchaser or lessee of the subject land *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or with any of the other persons above specified involving the relationship of employee-employer, agent-principal, or attorney-client, that member shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of such relationship and shall be ineligible to vote or participate in any way in such case or in any hearing thereon.

B. In any case described in subsection A pending before the board of supervisors, planning commission or board of zoning appeals, the applicant in the case shall, prior to any hearing on the matter, file with the board or commission a statement in writing and under oath identifying by name and last known address each person, corporation, partnership or other association specified in the first paragraph of subsection A. The requirements of this section shall be applicable only with respect to those so identified.

C. Any person knowingly and willfully violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 15.2-2289. Localities may provide by ordinance for disclosure of real parties in interest.

In addition to the powers granted by this chapter, localities may provide by ordinance that the local planning commission, governing body or zoning appeals board may require any applicant for a special exception, or a special use permit, amendment to the zoning ordinance or variance to make complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate

ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. *In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.*

§ 55-79.43. County and municipal ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations.

A. No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. *Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.*

B. Subdivision and site plan ordinances in any county, city or town in the Commonwealth shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B of this section, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided such land is subject to an approved site plan.

D. ~~For purposes of the subdivision, site plan and zoning ordinances, once the declarant no longer has a right to create additional units or to complete the common elements, the unit owners' association and its authorized agents shall be the sole proper parties to apply for and sign applications, notwithstanding that the unit owners' association is not the owner of the land; however, During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.~~

In accordance with subsection B of § 55-79.80, once the declarant no longer has such authority, the executive organ of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner (including the declarant if the declarant is the unit owner) shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Counties, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof, which do not conform to the zoning, land use and site plan regulations of the respective county or city in which the property is located, shall secure a special use permit, a special exception, or variance, as the case may be, prior to such property becoming a conversion condominium. A request for such a special use permit, special exception, or variance filed on or after July 1, 1982, shall be granted if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. No action on any such request shall be unreasonably delayed. In the event of an approved conversion to condominium ownership, counties, cities, towns, sanitary districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities and other public infrastructure, to a

condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.