

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 675

An Act to amend and reenact §§ 55-79.73:1, 55-79.75, and 55-510 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; amendment of documents; notice of meetings.

[H 2861]

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.73:1, 55-79.75, and 55-510 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.73:1. Amendment to condominium instruments; consent of mortgagee.

A. In the event that any provision in the ~~bylaws~~ *condominium instruments* requires the written consent of a mortgagee in order to amend the ~~bylaws~~ *condominium instruments*, the *unit owners'* association shall be deemed to have received the written consent of a mortgagee if the *unit owners'* association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address supplied by such mortgagee in a written request to the *unit owners'* association to receive notice of proposed amendments to the ~~bylaws~~ *condominium instruments* and receives no written objection to the adoption of the amendment from the mortgagee within ~~sixty~~ 60 days of the date that the notice of amendment is sent by the *unit owners'* association, unless the ~~bylaws~~ *condominium instruments* expressly provide otherwise. If the mortgagee has not supplied an address to the *unit owners'* association, the *unit owners'* association shall be deemed to have received the written consent of a mortgagee if the *unit owners'* association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within ~~sixty~~ 60 days of the date that the notice of amendment is sent by the *unit owners'* association, unless the ~~bylaws~~ *condominium instruments* expressly provide otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a unit as collateral.

C. Where the ~~bylaws~~ *condominium instruments* are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the ~~bylaws~~ *condominium instruments* does not specifically affect mortgagee rights.

§ 55-79.75. Meetings of unit owners' associations and executive organ.

A. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units ~~and to such other addresses as any of them may have designated~~ *unless the unit owner has provided to such officer or his agent an address other than the address of the unit*; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

In lieu of delivering notice as specified in the preceding paragraph of this subsection, such officer or his agent may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the unit owner to whom the notice is given, provided the officer or his agent certifies in writing that notice was sent.

B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

Notice of the time, date and place of each meeting of the executive organ or of any subcommittee or other committee thereof, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings which

request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the executive organ or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the executive organ, or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the (i) executive organ or any subcommittee or other committee thereof or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive organ or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive organ.

Any unit owner may record any portion of a meeting required to be open. The executive organ or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

If a meeting of the executive organ is conducted by telephone conference or video conference or similar electronic means, at least two board members shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any board member participating in the meeting who is not physically present.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for the election of officers.

C. The executive organ or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive organ shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the executive organ or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive organ may limit the comments of unit owners to the topics listed on the meeting agenda.

§ 55-510. Access to association records; association meetings; notice.

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the association, including, but not limited to, the association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation, and aggregate salary information of employees of the association, shall be available for examination and copying by a member in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the association. This right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five days' written notice reasonably identifying the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. Probable litigation means those instances where there has been a

specific threat of litigation from a party or the legal counsel of a party;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55-513;

5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55-510.1;

8. Documentation, correspondence or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof.

E. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. Notice shall be sent by United States mail to all members at the address of their respective lots ~~and to such other addresses as any of them may have designated~~ *unless the member has provided to such officer or his agent an address other than the address of the member's lot*; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the member. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.