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HOUSE BILL NO. 1871

Offered January 10, 2007

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A BILL to amend and reenact §§ 55-79.97 and 55-511 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; cancellation notices; methods of delivery.

 Patron—Suit

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-79.97 and 55-511 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 *provided to the owner or his agent by one of the following methods: (i) by hand delivered or sent delivery, (ii) by United States mail, return receipt requested, to the unit owner selling the unit or his agent postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service confirming that such mailing was prepared by the sender, (iii) by electronic means sent to the facsimile number or electronic mail address provided by the owner or agent, provided that the sender retains sufficient proof of such electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service confirming that such electronic delivery was prepared by the sender, or (iv) by overnight delivery using a commercial service or the United States Postal Service.* 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 in accordance with one of the methods described above for providing notice of cancellation.~~

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;

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

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

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

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

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

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

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

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

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

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

83 D. The purchaser may submit a copy of the contract to the unit owners' association with a request
84 for assurance that statements previously furnished pursuant to subsection C remain materially unchanged,
85 or, if there have been material changes, a statement specifying such changes. The purchaser shall be
86 provided with such assurances or such statement within ten days of the receipt of such request by the
87 unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for
88 the resale certificate, if any. Any fee shall reflect the actual cost incurred by the unit owners' association
89 in providing the assurances, but shall not exceed \$0.10 per page in copying costs or a total of \$50 for
90 all costs incurred in updating the resale certificate. The unit owners' association may also collect from
91 the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to
92 this subsection. In no event, however, shall the unit owners' association require reimbursement of any
93 costs not expressly authorized in this subsection. Nor shall the unit owners' association charge any other
94 fee for the preparation or issuance of such resale certificate or making such certificate available by
95 electronic means except as expressly provided in this subsection.

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

99 F. The unit owners' association shall furnish the resale certificate upon the written request of any unit
100 owner within 14 days of the receipt of such request. Payment of the actual costs of preparing the resale
101 certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but the total
102 fee shall not exceed \$0.10 per page in copying costs or a total of \$100, including and not in addition to,
103 any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85, for all costs incurred in
104 preparing the resale certificate, except that the unit owners' association, upon mutual agreement with the
105 seller, may collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i)
106 a rush fee, not to exceed \$25, for furnishing the resale certificate within three business days from the
107 actual receipt of the request; (ii) the actual cost of any mailing or delivery requested by the seller
108 pursuant to this subsection; and (iii) any actual cost incurred at the request and with the consent of the
109 purchaser. Neither the unit owners' association nor its management agent, if any, shall require cash or
110 certified funds unless the unit owner is delinquent in any payments due to the unit owners' association
111 in excess of 30 days or if a check of the unit owner made payable to the unit owners' association was
112 returned for insufficient funds within the last six months. In no event, however, shall the unit owners'
113 association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the
114 unit owners' association charge any other fee for the preparation or issuance of such resale certificate or
115 making such certificate available by electronic means except as expressly provided in this subsection.

116 G. When a resale certificate has been issued as required by this section, the unit owners' association
117 shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment
118 account and the status of the unit with respect to any violation of the condominium instruments as of
119 the date of the resale certificate unless the purchaser had actual knowledge that the contents of the resale
120 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 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.

§ 55-511. Contract disclosure statement; right of cancellation.

A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in the contract that (i) the lot is located within a development which is subject to the Virginia Property Owners' Association Act; (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with § 55-512; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (i) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or with the Real Estate Board pursuant to § 55-516.1, (ii) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection E of § 55-512, or (iii) written notice has been provided by the association that a packet is not available.

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 association disclosure packet shall be current as of a date specified on the association disclosure packet obtained by the seller in accordance with this section. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available 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 association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be *provided to the owner or his agent by one of the following methods: (i) by hand delivered or sent delivery, (ii) by United States mail, return receipt requested, to the owner or his agent postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service confirming that such mailing was prepared by the sender, (iii) by electronic means sent to the facsimile number or electronic mail address provided by the owner or agent, provided that the sender retains sufficient proof of such electronic delivery,*

182 *which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or*
183 *a certificate of service confirming that such electronic delivery was prepared by the sender, or (iv) by*
184 *overnight delivery using a commercial service or the United States Postal Service. Such cancellation*
185 *shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.*
186 *The association may also send the resale certificate by electronic means with the consent of the seller*
187 *and the purchaser in accordance with one of the methods described above for providing notice of*
188 *cancellation.*

189 D. Whenever any contract is canceled based on a failure to comply with subsection A or C or
190 pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the
191 cancellation, unless the parties to the contract agreed upon a shorter period.

192 E. Any rights of the purchaser to cancel the contract provided by this chapter are waived
193 conclusively if not exercised prior to settlement.

194 F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may not
195 be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived.