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SENATE BILL NO. 248

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 55-79.90, 55-79.97, and 55-513.1 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 55-79.75:2, relating to the Condominium and Property Owners' Association Acts; flying of flags; disclosure.

Patron—Ticer

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.90, 55-79.97, and 55-513.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 55-79.75:2 as follows:

§ 55-79.75:2. Flag display; necessary supporting structures; affirmative defense.

A. Unless expressly prohibited by the condominium instruments, no unit owners' association shall prohibit a unit owner from displaying the flag of (i) the United States, (ii) the Commonwealth, (iii) any active branch of the armed forces of the United States, or (iv) any military valor or service award of the United States.

B. The unit owners' association may restrict the display of such signs in the common elements. A unit owners' association may establish reasonable restrictions as to the size, place, duration, and manner of placement or display of such flag.

C. In any action brought by the unit owners' association under § 55-79.80:2, the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to § 55-79.90 or 55-79.97.

§ 55-79.90. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and shall include the following:

1. The name and principal address of the declarant and the condominium;

2. A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;

4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

6. The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection (b) of § 55-79.79;

9. A statement that the purchaser may cancel the disposition within ten days of delivery of the current public offering statement, or within ten days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium which are planned but not yet begun, or begun but not yet completed. Said statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when

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59 material, and the time by which the improvements shall be completed. Any limitations on the declarant's
60 obligation to begin or complete any such improvements shall be expressly stated;

61 11. If the units in the condominium are being subjected to a time-share instrument pursuant to
62 § 55-367, the information required to be disclosed by § 55-374;

63 12. A statement listing the facilities or amenities which are defined as common elements or limited
64 common elements in the condominium instruments, which are available to a purchaser for use. Such
65 statement shall also include whether there are any fees or other charges for the use of such facilities or
66 amenities which are not included as part of any assessment, and the amount of such fees or charges, if
67 any, a purchaser may be required to pay;

68 13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;
69 and

70 14. *A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to*
71 *display any flag, including, but not limited to reasonable restrictions as to the size, place, and manner*
72 *of placement or display of such flag; and*

73 15. Additional information required by the agency to assure full and fair disclosure to prospective
74 purchasers.

75 B. The public offering statement shall not be used for any promotional purposes before registration
76 of the condominium project and afterwards only if it is used in its entirety. No person may advertise or
77 represent that the agency approves or recommends the condominium or disposition thereof. No portion
78 of the public offering statement may be underscored, italicized, or printed in larger or heavier or
79 different color type than the remainder of the statement unless the agency requires it.

80 C. The agency may require the declarant to alter or amend the proposed public offering statement in
81 order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the
82 promotional plan or plan of disposition or development of the condominium may be made after
83 registration without notifying the agency and without making appropriate amendment of the public
84 offering statement. A public offering statement is not current unless all amendments are incorporated.

85 D. If an interest in a condominium is currently registered with the Securities and Exchange
86 Commission of the United States, a declarant satisfies all requirements relating to the preparation of a
87 public offering statement in this chapter if he delivers to the purchaser and files with the agency a copy
88 of the public offering statement filed with the Securities and Exchange Commission. An interest in a
89 condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

90 § 55-79.97. Resale by purchaser.

91 A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and
92 subject to the provisions of subsection J and § 55-79.87 A, the unit owner shall disclose in the contract
93 that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act
94 requires the seller to obtain from the unit owners' association a resale certificate and provide it to the
95 purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale
96 certificate, (iv) the purchaser has a right to request an update of the resale certificate in accordance with
97 subsection D, and (v) the right to receive the resale certificate and the right to cancel the contract are
98 waived conclusively if not exercised before settlement.

99 B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole
100 remedy is to cancel the contract prior to settlement.

101 C. The information contained in the resale certificate shall be current as of a date specified on the
102 resale certificate. The purchaser may cancel the contract (i) within three days after the date of the
103 contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the
104 contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand
105 delivered or delivered with the consent of the purchaser by electronic means and a receipt obtained; or
106 (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United
107 States mail. Notice of cancellation shall be hand delivered or sent by United States mail, return receipt
108 requested, to the unit owner selling the unit or his agent. Such cancellation shall be without penalty, and
109 the unit owner shall cause any deposit to be returned promptly to the purchaser. The unit owners'
110 association may also send the resale certificate by electronic means with the consent of the seller and
111 the purchaser.

112 A resale certificate shall include the following:

113 1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and,
114 if applicable, an appropriate statement pursuant to § 55-79.85;

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

118 3. A statement, including the amount, of all assessments and any other fees or charges currently
119 imposed by the unit owners' association and associated with the purchase, disposition and maintenance
120 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 elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

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

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

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

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

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

15. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to display any flag, including, but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag.

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

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

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

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

F. The unit owners' association shall furnish the resale certificate upon the written request of any unit owner within 14 days of the receipt of such request. Payment of the actual costs of preparing the resale certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but the total fee shall not exceed \$0.10 per page in copying costs or a total of \$100, including and not in addition to, any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85, for all costs incurred in preparing the resale certificate, except that the unit owners' association, upon mutual agreement with the seller, may collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a rush fee, not to exceed \$25, for furnishing the resale certificate within three business days from the actual receipt of the request; (ii) the actual cost of any mailing or delivery requested by the seller

pursuant to this subsection; and (iii) any actual cost incurred at the request and with the consent of the purchaser. Neither the unit owners' association nor its management agent, if any, shall require cash or certified funds unless the unit owner is delinquent in any payments due to the unit owners' association in excess of 30 days or if a check of the unit owner made payable to the unit owners' association was returned for insufficient funds within the last six months. In no event, however, shall the unit owners' association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the unit owners' association charge any other fee for the preparation or issuance of such resale certificate or making such certificate available by electronic means except as expressly provided in this subsection.

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

§ 55-513.1. Flag display; necessary supporting structures; affirmative defense.

A. Unless specifically prohibited by the association's rules and regulations or architectural guidelines provided in the disclosure packet required pursuant to § 55-512, the association shall not prohibit any lot owner from displaying the flag of (i) the United States, (ii) the Commonwealth, (iii) any active branch of the armed forces of the United States, or (iv) any military valor or service award of the United States.

B. *The unit owners' association may restrict the display of such signs in the common areas and may establish reasonable restrictions as to the size, place, duration, and manner of placement or display of such flag.*

C. In any action brought by the association under § 55-513, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure packet required pursuant to § 55-512.