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SENATE BILL NO. 621

Offered January 13, 2006

A BILL to amend and reenact §§ 55-512 and 55-513.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-513.2, relating to the Property Owners' Association Act; display of political signs.

Patron—Puller

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-512 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 55-513.2, as follows:

§ 55-512. Contents of association disclosure packet; other requirements.

A. Subject to the provisions of subsections C and F, the association shall make available to an owner or his authorized agent within 14 days after receipt of a written request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the purchaser. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request and fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;

2. A statement of any expenditure of funds approved by the association or the board of directors which shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association and associated with the purchase, disposition and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial condition for the last fiscal year for which such statement is available;

7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased;

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

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in subdivision ~~12~~*13* of this subsection;

10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

12. *A statement setting forth any restrictions as to the size, place, duration, or manner of placement or display of political signs by a lot owner on his lot in accordance with § 55-513.2;*

13. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;

~~13~~*14*. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

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~~14~~*15*. A copy of the fully completed one-page cover sheet developed by the Real Estate Board pursuant to § 54.1-2105.1; and

~~15~~*16*. 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.

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

The disclosure packet, once received by the seller from the association, shall be delivered by the seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the purchaser of the lot. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

B. The purchaser may submit a copy of the contract to the association with a request for assurance that the information required by this section previously furnished remains 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 10 days of the receipt of such request by the association. The purchaser may be required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the association in providing such assurances but shall not exceed $0.10 per page of copying costs or a total of $50 for all costs incurred in updating the association disclosure packet. The 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 association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the association charge any other fee for the preparation or issuance of such association disclosure packet or making such packet available by electronic means except as expressly provided in this subsection.

C. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but shall not exceed $0.10 per page of copying costs or a total of $100 for all costs incurred in preparing the association disclosure packet, except that the 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 association nor its management agent, if any, shall require cash or certified funds unless the lot owner is delinquent in any payments due to the association in excess of 30 days or if a check of the lot owner made payable to the association was returned for insufficient funds within the last six months. In no event, however, shall the association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the association charge any other fee for the preparation or issuance of such association disclosure packet or making such packet available by electronic means except as expressly provided in this subsection.

D. When a disclosure packet has been issued as required by this section, the 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 lot with respect to any violation of any of the instruments referred to in subdivision ~~12~~*13* of subsection A as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

E. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form provided herein within 14 days from the actual receipt of the request by an officer, director or agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The 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 declaration, bylaws, rules and regulations, and architectural guidelines of the 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 the association or otherwise upon request, shall provide the 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.

F. The contract disclosures required by § 55-511 and the disclosure packet required by this section need not be provided in the case of:

1. A disposition of a lot by gift;

2. A disposition of a lot pursuant to court order if the court so directs;

3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;

4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or

5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

G. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the packet 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. *For the purposes of this subsection, displaying the flag shall include the display of flags on mailboxes or similar structures.*

B. 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.

§ 55-513.2. Display of political signs.

A. Except as provided in subsection B or as otherwise expressly provided in the declaration, no declaration or association's rules and regulations or architectural guidelines shall restrict or prohibit the display by a lot owner on his lot of a candidate sign or a sign that advertises the support or defeat of any question submitted to the voters in accordance with Title 24.2. For the purposes of this section, "candidate sign" means a sign on behalf of a candidate for public office or a slate of candidates for public office.

B. An association may restrict the display of such signs (i) in the common areas or (ii) in accordance with federal or state law. An association may establish reasonable restrictions as to the size, place, duration, and manner of placement or display of such signs, except that no restriction on the duration of the display of such signs shall be less than (a) 30 days before the primary election, general election or vote on the proposition or (b) seven days after the primary election, general election, or vote on the proposition.

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