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HOUSE BILL NO. 1076

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 54.1-2105.1, 54.1-2130, 55-508, 55-509, 55-509.2, 55-510, 55-513, 55-513.1, 55-514, and 55-514.2 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 55-509.3 through 55-509.10, 55-514.1:1, and 55-514.3; and to repeal §§ 55-511 and 55-512 of the Code of Virginia, relating to the Property Owners' Association Act; reorganization; definitions; disclosure packets; management; fees.

Patron—Suit

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2105.1, 54.1-2130, 55-508, 55-509, 55-509.2, 55-510, 55-513, 55-513.1, 55-514, and 55-514.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-509.3 through 55-509.10, 55-514.1:1, and 55-514.3 as follows:

§ 54.1-2105.1. Other powers and duties of the Real Estate Board.

In addition to the provisions of §§ 54.1-2105.01 through 54.1-2105.04, the Board shall:

1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1;

3. Develop a residential property disclosure statement form for use in accordance with the provisions of Chapter 27 (§ 55-517 et seq.) of Title 55; and

4. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to § 55-512 55-509.5, which form shall summarize the unique characteristics of property owners' associations generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including, but not limited to, the obligation of a lot owner to pay regular annual or special assessments to the association, and the penalty for failure or refusal to pay such assessments; the purposes for which such assessments may be used; and the importance the declaration of restrictive covenants and other governing documents play in association living.

§ 54.1-2130. Definitions.

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship. Agency includes representation of a client as a standard agent or a limited service agent. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall have no obligations under §§ 54.1-2131 through 54.1-2135 of this article.

"Brokerage agreement" means the agreement by which a real estate licensee represents a client in a brokerage relationship.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

"Client" means a person who has entered into a brokerage relationship with a licensee.

"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the

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59 licensee rather than a client.

60 "Designated agent" or "designated representative" means a licensee who has been assigned by a
61 principal or supervising broker to represent a client when a different client is also represented by such
62 principal or broker in the same transaction.

63 "Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both
64 seller and buyer, or both landlord and tenant, in the same real estate transaction.

65 "Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.) of
66 Chapter 21 of this title.

67 "Limited service representative" means a licensee who acts for or represents a client with respect to
68 real property containing from one to four residential units, pursuant to a brokerage agreement that
69 provides that the limited service representative will not provide one or more of the duties set forth in
70 subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service
71 representative shall have the obligations set out in the brokerage agreement, except that a limited service
72 representative shall provide the client, at the time of entering the brokerage agreement, copies of any
73 and all disclosures required by federal or state law, or local disclosures expressly authorized by state
74 law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client
75 under the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a
76 condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as
77 purchaser, the condominium resale certificate required by § 55-79.97; and (iii) if the client is selling a
78 property subject to the Property Owners' Association Act (§ 55-508 et seq.), the rights and obligations of
79 the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet
80 required by § 55-512 55-509.5. A limited service representative may act as the agent or representative of
81 the client only by so providing in writing in the brokerage agreement. If the brokerage agreement does
82 not so state, the limited service representative shall be deemed as acting as an independent contractor of
83 the client.

84 "Ministerial acts" means those routine acts which a licensee can perform for a person which do not
85 involve discretion or the exercise of the licensee's own judgment.

86 "Standard agent" means a licensee who acts for or represents a client in an agency relationship. A
87 standard agent shall have the obligations as provided in this article and any additional obligations agreed
88 to by the parties in the brokerage agreement.

89 *Article 1.*

90 *General Provisions.*

91 § 55-508. Applicability.

92 A. This chapter shall apply to developments subject to a declaration, as defined herein, initially
93 recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all
94 subdivisions created under the former Subdivided Land Sales Act (§ 55-336 et seq.). For the purposes of
95 this chapter, as used in the former Subdivided Land Sales Act, the terms:

96 "Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and
97 control of a development shall be deemed to correspond with the term "declaration";

98 "Developer" shall be deemed to correspond with the term "declarant";

99 "Lot" shall be deemed to correspond with the term "lot"; and

100 "Subdivision" shall be deemed to correspond with the term "development."

101 This chapter shall be deemed to supersede the *former* Subdivided Land Sales Act (§ 55-336 et seq.),
102 and no development shall be established under the latter on or after July 1, 1998. This chapter shall not
103 be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998;
104 however, any development established prior to the enactment of the *former* Subdivided Land Sales Act
105 may specifically provide for the applicability of the provisions of this chapter.

106 This chapter shall not be construed to affect the validity of any provision of any prior declaration;
107 however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot
108 in a development is subject to the provisions of this chapter, all lots in the development shall be subject
109 to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded
110 from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may
111 specifically provide for the applicability of the provisions of this chapter. The granting of rights in this
112 chapter shall not be construed to imply that such rights did not exist with respect to any development
113 created in the Commonwealth before July 1, 1989.

114 B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any
115 association governing, or (iii) relationship of a member to any association governing condominiums
116 created pursuant to the Condominium Act (§ 55-79.39 et seq.), cooperatives created pursuant to the
117 Virginia Real Estate Cooperative Act (§ 55-424 et seq.), time-shares created pursuant to the Virginia
118 Real Estate Time-Share Act (§ 55-360 et seq.), or membership campgrounds created pursuant to the
119 Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock,
120 nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes

available golf, ski and other recreational facilities both to its members and the general public.

§ 55-509. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Common interest community" means real estate located within the Commonwealth subject to a declaration that contains lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Common interest community manager" means an individual or business entity, including but not limited to a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to an association or common interest community.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

~~"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration a common interest community.~~

~~"Disclosure packet update" means an update of the financial information referenced in subdivisions A 4 through A 7 of § 55-509.5. The update shall include a copy of the original disclosure packet.~~

~~"Financial update" means an update of the financial information referenced in subdivisions A 4 through A 7 of § 55-509.5.~~

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 6.1-2.20.

§ 55-509.2. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed sixty days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans

and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (vi) any contracts in which the association is a contracting party; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property.

If the association is managed by a ~~management company~~ *common interest community manager* in which the declarant, or its principals, have no pecuniary interest or management role, then such ~~management company~~ *common interest community manager* shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

§ 55-509.3. Variation by agreement; declarations; powers of associations; lot transfer fees prohibited.

A. Except as expressly provided in this chapter, the provisions of this chapter may not be varied by agreement, and the rights conferred by this chapter may not be waived.

B. All declarations shall comply with the terms of this chapter and the associations created in accordance with this chapter shall have only those powers that are expressly granted herein.

C. Effective July 1, 2008, except as applicable to the first conveyance of real property subject to this chapter, no association may impose an assessment or fee to be paid by the seller or the purchase upon the transfer of a lot. However, an association may collect regular assessments in advance at settlement, not to exceed an amount equal to three months of the regular assessment.

Article 2.

Disclosure Requirements; Authorized Fees.

§ 55-509.4. Contract disclosure statement; right of cancellation.

A. Subject to the provisions of subsection A of § 55-509.10, a person selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§ 55-508 et seq.); (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 subsection H of § 55-509.6 or subsection B of § 55-509.7, as appropriate; 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 (a) 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, (b) 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 A of § 55-509.5, or (c) 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; however, a disclosure packet update or financial update may be requested in accordance with subsection H of § 55-509.6 or subsection B of § 55-509.7, as appropriate. 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 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 lot owner or his agent by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;

3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser. The association may also send the association disclosure packet by electronic means unless either the seller or the purchaser requests a hard copy of the disclosure packet.

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

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

§ 55-509.5. Contents of association disclosure packet; delivery of packet.

A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or his authorized agent, an association disclosure packet to the purchaser or his authorized agent and, if identified, to the settlement agent. 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 is deemed received on the date of delivery. If sent by United States mail, the request is 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 that 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 of 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, including a statement of the balance due of any outstanding loans of the association;

7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that 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 documents referred to in subdivision 12 or 13;

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 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. A copy of the approved minutes of the board of directors and membership meetings for the six calendar months preceding the request for the disclosure packet;

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

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

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.

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

307 C. The disclosure packet shall be delivered in accordance with the written request and instructions of
308 the seller or his authorized agent, including a copy to the purchaser or his authorized agent and to the
309 settlement agent. The disclosure packet required by this section, shall not, in and of itself, be deemed a
310 security within the meaning of § 13.1-501.

311 § 55-509.6. Fees for disclosure packet; associations managed by a common interest community
312 manager.

313 A. The association or its common interest community manager may charge certain fees as authorized
314 by this section for the inspection of the property, the preparation and issuance of the disclosure packet
315 required § 55-509.5, and for such other services as set out in this section. The seller or his authorized
316 agent shall specify whether the disclosure packet shall be delivered electronically or hard copy, and
317 shall specify the complete contact information for the parties to whom the disclosure packet shall be
318 delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or
319 his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the
320 designated persons, at the same time it is delivered to the seller or his authorized agent.

321 B. A reasonable fee may be charged by the preparer as follows for:

322 1. The inspection of the property, a fee not to exceed \$100;

323 2. The preparation and delivery of the disclosure packet in (a) paper format, a fee not to exceed
324 \$150 or (b) electronic format, a fee not to exceed \$125. Only one fee shall be charged for the
325 preparation and delivery of the disclosure packet;

326 3. At the option of the seller or his authorized agent, expediting the inspection, preparation and
327 delivery of the disclosure packet, an additional expedite fee not to exceed \$50;

328 4. At the option of the seller or his authorized agent, an additional hard copy of the disclosure
329 packet, a fee not to exceed \$25 per hard copy, for each hard copy requested other than a hard copy for
330 the seller, purchaser, or the settlement agent;

331 5. At the option of the seller or his authorized agent, a fee not to exceed \$15 for hand delivery or
332 overnight delivery of the disclosure packet; and

333 6. A postclosing fee to the purchaser of the property, collected at settlement, for the purpose of
334 establishing the purchaser as the owner of the property in the records of the association, a fee not to
335 exceed \$50.

336 Except as otherwise provided in subsection E, neither the association nor its common interest
337 community manager shall require cash, check, certified funds or credit card payments at the time the
338 request for the disclosure packet is made.

339 For purposes of this section, an expedite fee shall only be charged if the inspection and preparation
340 of delivery of the disclosure packet are completed within five business days of the request for a
341 disclosure packet.

342 C. No fees other than those specified in this section, and as limited by this section, shall be charged
343 by the association or its common interest community manager for compliance with the duties and
344 responsibilities of the association under this chapter. The association or its common interest community
345 manager shall publish and make available in paper or electronic format, or both, a schedule of the
346 applicable fees so the seller or his authorized agent will know such fees at the time of requesting the
347 packet.

348 D. The seller or his authorized agent may request that the disclosure packet be provided in hard
349 copy or in electronic form. No association or common interest manager may require the seller or his
350 authorized agent to request the disclosure packet electronically. The seller or his authorized agent shall
351 continue to have the right to request a hard copy of the disclosure packet in person at the principal
352 place of business of the association. If the seller or his authorized agent requests that the disclosure
353 packet be provided in electronic format, neither the association nor its common interest community
354 manager may require the seller or his authorized agent to pay any fees to use the provider's electronic
355 network or system. If the seller or his authorized agent asks that the disclosure packet be provided in
356 electronic format, the seller or his authorized agent may designate no more than two additional
357 recipients to receive the disclosure packet in electronic format at no additional charge.

358 E. Any fees charged pursuant to this section shall not be collected at the time the request is made
359 but shall be deferred until settlement occurs on the sale of the property and shall be due and payable
360 out of the settlement proceeds in accordance with this chapter. The seller shall be responsible for any
361 and all costs associated with the disclosure packet, except for the costs of any disclosure packet update
362 or financial update, which costs shall be the responsibility of the requestor, payable at settlement.
363 Neither the association nor its common interest community manager shall require cash, check, certified
364 funds, or credit card payments at the time of the request is made for the disclosure packet.

365 F. If settlement does not occur within 90 days of the delivery of the disclosure packet, all of the fees,
366 including those costs that would have otherwise been the responsibility of the purchaser or settlement

agent, shall be assessed against the lot owner and shall become an assessment against the member's lot for the purposes of § 55-516. The seller may pay the association by cash, check, certified funds, or credit card. If the seller pays by credit card or electronic payment, the association may charge a convenience fee not to exceed \$25. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

G. The maximum allowable amount of such fee shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U. S. Department of Labor.

H. If a disclosure packet has been delivered within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, the purchaser or his authorized agent or the settlement agent, may request a disclosure packet update or financial update, under this subsection. The requestor shall specify whether the disclosure packet update or financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request. The financial update shall be delivered within three business days of the written request. A reasonable fee for the specified update may be charged by the preparer not to exceed \$50. Any fees charged for the specified update shall not be collected at the time the request is made but shall be deferred until settlement occurs on the sale of the property. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time of the request is made for the update to disclosure packet. The requestor may request that the specified update be provided in hard copy or in electronic form. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions. No association or common interest community manager may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requestor asks that the specified update be provided in electronic format, neither the association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. If the requestor asks that the specified update be provided in electronic format, the requestor may designate no more than two additional recipients to receive the specified update in electronic format at no additional charge. A copy of the specified update shall be provided to the seller or his authorized agent.

For purposes of this subsection, a request by a settlement agent for an update or a statement of account or other document to determine amounts to be paid from the settlement proceeds, shall be treated as a disclosure packet update.

I. When a disclosure packet has been delivered as required by § 55-509.5, 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 documents referred to in subdivision A 12 or A 13 of § 55-509.5 as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

J. If the association or its common interest community manager has been requested in writing to furnish the disclosure packet required by § 55-509.5, its failure to substantially comply with the requirements of this chapter 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 and its common interest community manager acting on behalf of 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 \$5,000.

§ 55-509.7. Fees for disclosure packets; associations not managed by a common interest community manager.

A. The association may charge a fee for the preparation and issuance of the disclosure packet required by § 55-509.5. 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. The seller or his authorized agent shall specify whether the disclosure packet shall be delivered electronically or hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent. The association shall advise the requestor if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

428 *B. If a disclosure packet has been delivered within the preceding 12-month period, a person specified*
429 *in the written instructions of the seller or his authorized agent, including the seller or his authorized*
430 *agent, the purchaser or his authorized agent or the settlement agent, may request a disclosure packet*
431 *update or a financial update, under this subsection. The requestor shall specify whether the disclosure*
432 *packet update or financial update shall be delivered electronically or in hard copy and shall specify the*
433 *complete contact information of the parties to whom the specified update shall be delivered. The*
434 *disclosure packet update shall be delivered within 10 days of the written request therefor. The financial*
435 *update shall be delivered within three business days of the written request therefor. A reasonable fee for*
436 *the specified update may be charged by the preparer not to exceed \$50. Any fees charged for the*
437 *specified update shall not be collected at the time the request is made but shall be deferred until*
438 *settlement occurs on the sale of the lot. The association shall not require cash, check, certified funds, or*
439 *credit card payments at the time of the request is made for the update to the disclosure packet. The*
440 *requestor may request that the specified update be provided in hard copy or in electronic form. There*
441 *shall be no fees charged for a response by the association or its common interest community manager*
442 *to a request from the settlement agent for written escrow instructions. No association may require the*
443 *requestor to request the specified update electronically. The seller or his authorized agent shall continue*
444 *to have the right to request a hard copy of the specified update in person at the principal place of*
445 *business of the association. If the requestor asks that the specified update be provided in electronic*
446 *format, the association shall not require the requester to pay any fees to use the provider's electronic*
447 *network or system. If the requestor asks that the specified update be provided in electronic format, the*
448 *requestor may designate no more than two additional recipients to receive the specified update in*
449 *electronic format at no additional charge. A copy of the specified update shall be provided to the seller*
450 *or his authorized agent.*

451 *C. When a disclosure packet has been delivered as required by § 55-509.5, the association shall, as*
452 *to the purchaser, be bound by the statements set forth therein as to the status of the assessment account*
453 *and the status of the lot with respect to any violation of any of the documents referred to in subdivision*
454 *A 12 or A 13 of § 55-509.5 as of the date of the statement unless the purchaser had actual knowledge*
455 *that the contents of the disclosure packet were in error.*

456 *D. If the association has been requested to furnish the disclosure packet required by this section, its*
457 *failure to substantially comply with the requirements of this chapter shall be deemed a waiver of any*
458 *claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or*
459 *architectural guidelines existing as of the date of the request with respect to the subject lot. The*
460 *association shall be liable to the seller in an amount equal to the actual damages sustained by the seller*
461 *in an amount not to exceed \$5,000.*

462 *§ 55-509.8. Fees for disclosure packets; properties subject to more than one declaration.*

463 *If the lot is subject to more than one declaration and the owner is a member of more than one*
464 *association, the provisions of § 55-509.5 shall be applicable to the delivery of the disclosure packets for*
465 *the multiple associations. If the subject lot owner is (i) a member of a master association, (ii) also a*
466 *member of one or more subsidiary associations, and (iii) each association has architectural control over*
467 *the subject lot, the association or its common interest community manager may charge one set of fees*
468 *authorized under § 55-509.6 or 55-509.7 for each of the applicable associations. The association or its*
469 *common interest community manager may charge for only the number of property inspections actually*
470 *performed, as required by the declarations of the applicable associations.*

471 *For the purposes of this section:*

472 *"Master association" means the association formed to represent the entire common interest*
473 *community; and*

474 *"Subsidiary association" means the associations formed as subsidiary entities to the master*
475 *association to represent those properties within a specified group of properties or sub-communities*
476 *within the master community.*

477 *§ 55-509.9. Responsibilities of settlement agents.*

478 *A. The settlement agent may request a disclosure packet update or a financial update from the*
479 *preparer of the disclosure packet. The preparer of the disclosure packet shall, upon request from the*
480 *settlement agent, provide the settlement agent with written escrow instructions directing the amount of*
481 *any funds to be paid from the settlement proceeds to the association or the common interest community*
482 *manager.*

483 *B. The settlement agent, when transmitting funds to the association or the common interest*
484 *community manager, shall, unless directed otherwise in the escrow instructions, provide the preparer of*
485 *the disclosure packet with (i) the complete record names of the seller, (ii) the address of the subject*
486 *property, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief*
487 *explanation of the application of any funds transmitted or by providing a copy of the HUD-1 settlement*
488 *statement, unless otherwise prohibited.*

489 *§ 55-509.10. Exceptions to disclosure requirements.*

The contract disclosures required by § 55-509.4 and the disclosure packet required by § 55-509.5 shall 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.*

B. 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.

Article 3.

Operation and Management of Association.

§ 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 that relate~~ to subdivisions 1 through 4 or ~~which is that are~~ 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 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

551 officer or his agent certifies in writing that notice was delivered to the member. Except as provided in
552 subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i)
553 within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such
554 minutes are distributed to board members as part of an agenda package for the next meeting of the
555 board of directors, whichever occurs first.

556 § 55-513. Adoption and enforcement of rules.

557 A. ~~The~~ *Except as otherwise provided in this chapter, the* board of directors ~~of the association~~ shall
558 have the power to establish, adopt, and enforce rules and regulations with respect to use of the common
559 areas and with respect to such other areas of responsibility assigned to the association by the declaration,
560 except where expressly reserved by the declaration to the members. Rules and regulations may be
561 adopted by resolution and shall be reasonably published or distributed throughout the development. A
562 majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions
563 of the association's bylaws and called for that purpose, shall repeal or amend any rule or regulation
564 adopted by the board of directors. Rules and regulations may be enforced by any method normally
565 available to the owner of private property in Virginia, including, but not limited to, application for
566 injunctive relief or damages, during which the court may award to the association court costs and
567 reasonable attorneys' fees.

568 B. The board of directors ~~of the association~~ shall also have the power, to the extent the declaration
569 or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's
570 right to use facilities or services, including utility services, provided directly through the association for
571 nonpayment of assessments which are more than sixty days past due, to the extent that access to the lot
572 through the common areas is not precluded and provided that such suspension shall not endanger the
573 health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member
574 for any violation of the declaration or rules and regulations for which the member or his family
575 members, tenants, guests, or other invitees are responsible.

576 Before any such charges or suspension may be imposed, the member shall be given an opportunity to
577 be heard and to be represented by counsel before the board of directors or other tribunal specified in the
578 documents. Notice of a hearing, including the charges or other sanctions that may be imposed, shall be
579 hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the
580 address of record with the association at least fourteen days prior to the hearing.

581 The amount of any charges so assessed shall not be limited to the expense or damage to the
582 association caused by the violation, but shall not exceed fifty dollars for a single offense or ten dollars
583 per day for any offense of a continuing nature and shall be treated as an assessment against the
584 member's lot for the purposes of § 55-516. However, the total charges for any offense of a continuing
585 nature shall not be assessed for a period exceeding ninety days. After the date a lawsuit is filed
586 challenging any such charges, no additional charges shall accrue. If the court rules in favor of the
587 association, it shall be entitled to collect such charges from the date the action was filed as well as all
588 other charges assessed pursuant to this section against the lot owner prior to the action.

589 The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt
590 requested, to the member at the address of record with the association within seven days of the hearing.

591 § 55-513.1. Flag display; necessary supporting structures; affirmative defense.

592 A. Unless specifically prohibited by the association's rules and regulations or architectural guidelines
593 provided in the disclosure packet required pursuant to § ~~55-512~~ 55-509.5, the association shall not
594 prohibit any lot owner from displaying the flag of the United States.

595 B. The association may restrict the display of such flag in the common areas and may establish
596 reasonable restrictions as to the time, size, place, duration, and manner of placement or display.

597 In any action brought by the association under § 55-513, the lot owner shall be entitled to assert as
598 an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or
599 any flagpole or similar structure necessary to display such flags was not contained in the disclosure
600 packet required pursuant to § ~~55-512~~ 55-509.5.

601 § 55-514. Authority to levy special assessments.

602 A. ~~In~~ *Except as otherwise provided in this chapter, in* addition to all other assessments which are
603 authorized in the declaration, the board of directors ~~of an association~~ shall have the power to levy a
604 special assessment against its members if the purpose in so doing is found by the board to be in the best
605 interests of the association and the proceeds of the assessment are used primarily for the maintenance
606 and upkeep of the common area and such other areas of association responsibility expressly provided for
607 in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a
608 meeting of the membership convened in accordance with the provisions of the association's bylaws
609 within sixty days of promulgation of the notice of the assessment shall rescind or reduce the special
610 assessment. No director or officer of the association shall be liable for failure to perform his fiduciary
611 duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary
612 duty is rescinded by the owners pursuant to this section, and the association shall indemnify such

director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55-516 as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. Notwithstanding the immediately preceding sentence, direct access to the member's lot over any road within the development which is a common area shall not be denied the member.

§ 55-514.1:1. Association may delegate responsibilities to common interest community manager.

The association may delegate any of the duties or responsibilities of the association imposed under this chapter to a common interest community manager, who shall be authorized to act on behalf of the association in the performance of such duties or responsibilities; however, such delegation shall not relieve the association of such duties or responsibilities.

§ 55-514.2. Deposit of funds; fidelity bond.

A. All funds deposited with a ~~managing agent~~ common interest community manager shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the ~~managing agent~~ common interest community manager. The funds shall be the property of the association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual association basis.

B. Any association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy ~~covering~~ *insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, and or persons employed by the association, and or committed by any managing agent and common interest community manager or employees of the managing agent common interest community manager.* Such bond or insurance policy shall provide a ~~minimum~~ *of \$10,000 in coverage in an amount equal to the lesser of \$1 million or the amount of the reserve balances of the association and three times the monthly assessments of such association. The minimum coverage amount shall be \$10,000.* The board of directors or ~~managing agent~~ common interest community manager may obtain such bond or insurance on behalf of the association.

§ 55-514.3. Inspection of lots conducted by common interest community manager; fee.

For associations managed by a common interest community manager pursuant to § 55-509.6, the association's common interest community manager shall conduct an inspection of the exterior of the property, if the association has architectural control over the subject property, to determine compliance with § 55-509.5. If an inspection is conducted, a fee may be charged as provided in § 55-509.6.

2. That §§ 55-511 and 55-512 of the Code of Virginia are repealed.