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HOUSE BILL NO. 2670

Offered January 23, 2009

A BILL to amend and reenact §§ 54.1-2351 and 55-530 of the Code of Virginia, relating to Common Interest Community Board; complaint fee.

Patron—Sickles

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2351 and 55-530 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2351. General powers and duties of Board concerning associations.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action or suit involving a violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.) or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders by a declarant or a developer of a time-share project of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this chapter, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than \$1,000 per violation against any person who violates any provision of this section chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.) or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

§ 55-530. Powers of the Board; Common Interest Community Ombudsman; complaints.

A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by § 54.1-2349 and this chapter.

B. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman. The Ombudsman shall be a member in good standing in the Virginia State Bar. All state

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HB2670

59 agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in
60 the performance of its duties under this chapter. The expenses for the operations of the Office of the
61 Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall
62 be paid first from interest earned on deposits constituting the fund and the balance from the moneys
63 collected annually in the fund.

64 C. The Office of the Common Interest Community Ombudsman shall:

65 1. Assist members in understanding their rights and the processes available to them according to the
66 declaration and bylaws of the association;

67 2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in
68 person;

69 3. Provide to members and other citizens information concerning common interest communities upon
70 request;

71 4. Make available, either separately or through an existing Internet website utilized by the Director,
72 information as set forth in subdivision 3 and such additional information as may be deemed appropriate;

73 5. Receive the notices of complaint filed;

74 6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on
75 inquiries received, the types of assistance requested, notices of complaint received, any actions taken,
76 and the disposition of each such matter;

77 7. Upon request, assist members in using the procedures and processes available to them in the
78 association, including nonbinding explanations of laws or regulations governing common interest
79 communities or interpretations thereof by the Board, and referrals to public and private agencies offering
80 alternative dispute resolution services, with a goal of reducing and resolving conflicts among
81 associations and their members. Such assistance may require the review of the declaration and other
82 records of an association. An association shall provide such information to the Office of the Common
83 Interest Community Ombudsman within a reasonable time upon request;

84 8. Ensure that members have access to the services provided through the Office of the Common
85 Interest Community Ombudsman and that the members receive timely responses from the representatives
86 of the Office of the Common Interest Community Ombudsman to the inquiries;

87 9. Upon request to the Director by (i) any of the standing committees of the General Assembly
88 having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the
89 Director for dissemination to the requesting parties assessments of proposed and existing common
90 interest community laws and other studies of common interest community issues;

91 10. Monitor changes in federal and state laws relating to common interest communities;

92 11. Provide information to the Director that will permit the Director to report annually on the
93 activities of the Office of the Common Interest Community Ombudsman to the standing committees of
94 the General Assembly having jurisdiction over common interest communities and to the Housing
95 Commission. The Director's report shall be filed by December 1 of each year, and shall include a
96 summary of significant new developments in federal and state laws relating to common interest
97 communities each year; and

98 12. Carry out activities as the Board determines to be appropriate.

99 D. The Board may use the remainder of the interest earned on the balance of the fund and of the
100 moneys collected annually and deposited in the fund for financing or promoting the following:

101 1. Information and research in the field of common interest community management and operation;

102 2. Expeditious and inexpensive procedures for resolving complaints about an association from
103 members of the association or other citizens;

104 3. Seminars and educational programs designed to address topics of concern to community
105 associations; and

106 4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

107 E. The Board shall establish by regulation a requirement that each association shall establish
108 reasonable procedures for the resolution of written complaints from the members of the association and
109 other citizens, which system shall include the following:

110 1. A record of each complaint shall be maintained for no less than one year after the association acts
111 upon the complaint.

112 2. Such association shall provide complaint forms or written procedures to be given to persons who
113 wish to register written complaints. The forms or procedures shall include the address and telephone
114 number of the association or its common interest community manager to which complaints shall be
115 directed and the mailing address, telephone number, and electronic mail address of the Office of the
116 Common Interest Community Ombudsman. The forms and written procedures shall include a clear and
117 understandable description of the complainant's right to give notice of adverse decisions pursuant to this
118 section.

119 F. A complainant may give notice to the Board of any final adverse decision in accordance with
120 regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse

121 decision, shall be in writing on forms prescribed by the Board, shall include copies of all records
122 pertinent to the decision, and shall be accompanied by a \$25 \$100 filing fee. The fee shall be collected
123 by the Director and paid directly into the state treasury and credited to the Common Interest Community
124 Management Information Fund, § 55-530.1. The Board may, for good cause shown, waive or refund the
125 filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the
126 member. The Director shall provide a copy of the written notice to the association that made the final
127 adverse decision.

128 G. The Director or his designee, may request additional information concerning any notice of
129 complaint from the association that made the final adverse decision. The association shall provide such
130 information to the Director within a reasonable time upon request. If the Director upon review
131 determines that the final adverse decision may be in conflict with laws or regulations governing
132 common interest communities or interpretations thereof by the Board, the Director may, in his sole
133 discretion, provide the complainant and the association with information concerning such laws or
134 regulations governing common interest communities or interpretations thereof by the Board. The
135 determination of whether the final adverse decision may be in conflict with laws or regulations
136 governing common interest communities or interpretations thereof by the Board shall be a matter within
137 the sole discretion of the Director, whose decision is final and not subject to further review. The
138 determination of the Director shall not be binding upon the complainant or the association that made the
139 final adverse decision.

140 H. The Board shall issue a certificate of filing to each association which has properly filed in
141 accordance with this title. The certificate shall include the date of registration and a unique registration
142 number assigned by the Board.

143 I. The Board may prescribe regulations which shall be adopted, amended or repealed in accordance
144 with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter.