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SENATE BILL NO. 1366

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact § 55-509.2 of the Code of Virginia, relating to the Virginia Property Owners' Association Act; control of association by declarant.

Patrons—Barker; Delegate: Sickles

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 55-509.2 of the Code of Virginia is amended and reenacted as follows:

§ 55-509.2. Control of association by declarant; funds of the association during declarant control; documents to be provided by declarant upon transfer of control.

A. The declaration may authorize the declarant to appoint and remove some or all of the members of the board of directors or to exercise powers and responsibilities otherwise assigned to the board of directors or the association for a period of time that shall not exceed (i) five years or (ii) three months after 80 percent of all lots in all phases of the development have been conveyed, whichever occurs first.

B. All association funds collected during the period of declarant control shall be maintained separately in the association's name and shall not be commingled with funds of the declarant or the funds of any other association. In addition, during the period of declarant control no association funds shall be used by a declarant to defend any civil or criminal action, or administrative or arbitration proceeding that has been filed or initiated against the declarant or directors appointed to the board of the declarant, regardless of whether such action or proceeding concerns the operation of the association.

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

INTRODUCED

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