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SENATE BILL NO. 1489

Offered January 22, 2009

A BILL to amend and reenact § 55-509 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-515.3, relating to the Virginia Property Owners' Association Act; definitions; reformation of declarations.

Patron—Vogel

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 55-509 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-515.3 as follows:

§ 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 the same as that term is defined in § 55-528.~~

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"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 or group of instruments, 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) grants rights to the association with respect to the common area or imposes on the association maintenance or operational responsibilities for on the association with respect to the common area or ;(ii) creates the authority in authorizes 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; or (iii) requires any person owning a lot subject to the declaration to be a member of an association governing the real estate. "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.

Except to the extent otherwise provided in a declaration, a series of declarations or deeds of dedication requiring the owners of the lots subject thereto to be members of the same association shall be deemed a single declaration.

"Development" means real property located within this the 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. Development shall also include real property located within the Commonwealth developed in phases and subject to individual declarations corresponding to each such phase, which phases are part of a uniform and overall scheme of development.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 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 2 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.

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

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

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

64 § 55-515.3. *Reformation of declaration; judicial procedure.*

65 A. *An association may petition a court of equity in the county or city wherein the development or the*  
66 *greater part thereof is located to reform a declaration where the association, acting through its board*  
67 *of directors, has attempted to amend the declaration using provisions outlined therein to resolve (i)*  
68 *inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal*  
69 *rights and responsibilities of the association or individual lot owners; (ii) scrivener's errors, including*  
70 *incorrectly identifying the association, incorrectly identifying an entity other than the association, or*  
71 *errors arising from oversight or from an inadvertent omission or mathematical mistake; or (iii) an*  
72 *ambiguity in the declaration with respect to an objectively verifiable fact.*

73 B. *The court shall have jurisdiction to:*

74 1. *Reform, in whole or in part, any provision of a declaration; and*

75 2. *Correct mistakes or any other error in the declaration that may exist with respect to the*  
76 *declaration for any other purpose.*

77 C. *A petition filed by the association with the court setting forth any inconsistency or error made in*  
78 *the declaration, or the necessity for any change therein, shall be deemed sufficient basis for the*  
79 *reformation, in whole or in part, of the declaration, provided that:*

80 1. *At least three duly called meetings of the association have been held where there have been good*  
81 *faith attempts to lawfully amend the declaration for the reasons specified in subsection A, which*  
82 *attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer*  
83 *of the association; and*

84 2. *There is no adequate remedy at law as practical and effective to attain the ends of justice as may*  
85 *be accomplished in a court of equity.*

86 *The court may require such additional evidence or information from the association as it deems*  
87 *appropriate.*

88 D. *When it appears to the satisfaction of the court that the requirements of subsection C have been*  
89 *met, the court may order the reformation, in whole or in part, of the subject declaration. Such order,*  
90 *together with any revised declaration that may be necessary, shall be recorded in the clerk's office in*  
91 *the same manner required for the recordation of a declaration.*

92 **2. That an emergency exists and this act is in force from its passage.**

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