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HOUSE BILL NO. 702

Offered January 13, 2010

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A BILL to amend and reenact §§ 55-509.4 and 55-509.7 of the Code of Virginia, relating to the Property Owners' Association Act; fees for disclosure packet; when collected.

Patrons—Bulova and Surovell

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-509.4 and 55-509.7 of the Code of Virginia are amended and reenacted as follows:**

§ 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 C 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 Common Interest Community 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 prepared 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 C 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.

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

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59 cancellation, unless the parties to the contract specify in writing a shorter period.

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

62 F. Except as expressly provided in this chapter, the provisions of this section and § 55-509.5 may not
63 be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

64 § 55-509.7. Fees for disclosure packets; associations not managed by a common interest community
65 manager.

66 A. The association may charge a fee for the preparation and issuance of the association disclosure
67 packet required by § 55-509.5. Any fee shall reflect the actual cost of the preparation of the association
68 disclosure packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs
69 incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify
70 whether the association disclosure packet shall be delivered electronically or in hard copy and shall
71 specify the complete contact information of the parties to whom the disclosure packet shall be delivered.
72 If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his
73 authorized agent, the preparer shall provide the disclosure packet directly to the designated persons, at
74 the same time it is delivered to the seller or his authorized agent. The association shall advise the
75 requestor if electronic delivery of the disclosure packet or the disclosure packet update or financial
76 update is not available, if electronic delivery has been requested by the seller or his authorized agent.

77 B. *No fees other than those specified in this section, and as limited by this section, shall be charged*
78 *by the association for compliance with its duties and responsibilities under this chapter. Any fees*
79 *charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If*
80 *unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in*
81 *accordance with the provisions of the declaration and § 55-516. The seller may pay the association by*
82 *cash, check, certified funds, or credit card, if credit card payment is an option offered by the*
83 *association.*

84 C. If an association disclosure packet has been issued for a lot within the preceding 12-month period,
85 a person specified in the written instructions of the seller or his authorized agent, including the seller or
86 his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update.
87 The requestor shall specify whether the disclosure packet update shall be delivered electronically or in
88 hard copy and shall specify the complete contact information of the parties to whom the specified
89 update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written
90 request therefor.

91 D. The settlement agent may request a financial update. The requestor shall specify whether the
92 financial update shall be delivered electronically or in hard copy, and shall specify the complete contact
93 information of the parties to whom the update shall be delivered. The financial update shall be delivered
94 within three business days of the written request therefor.

95 E. A reasonable fee for the disclosure packet update or a financial update may be charged by the
96 preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may
97 request that the association perform an additional inspection of the exterior of the dwelling unit and the
98 lot, as authorized in the declaration, for a fee not to exceed \$50. Any fees charged for the specified
99 update shall be collected at the time settlement occurs on the sale of the lot. The association shall not
100 require cash, check, certified funds, or credit card payments at the time the request is made for the
101 disclosure packet update. The requestor may request that the specified update be provided in hard copy
102 or in electronic form.

103 F. No association may require the requestor to request the specified update electronically. The seller
104 or his authorized agent shall continue to have the right to request a hard copy of the specified update in
105 person at the principal place of business of the association. If the requestor asks that the specified
106 update be provided in electronic format, the association shall not require the requester to pay any fees to
107 use the provider's electronic network or system. If the requestor asks that the specified update be
108 provided in electronic format, the requestor may designate no more than two additional recipients to
109 receive the specified update in electronic format at no additional charge. A copy of the specified update
110 shall be provided to the seller or his authorized agent.

111 G. When a disclosure packet has been delivered as required by § 55-509.5, the association shall, as
112 to the purchaser, be bound by the statements set forth therein as to the status of the assessment account
113 and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations,
114 architectural guidelines and articles of incorporation, if any, of the association as of the date of the
115 statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in
116 error.

117 H. If the association has been requested to furnish the association disclosure packet required by this
118 section, failure to provide the association disclosure packet substantially in the form provided in this
119 section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the
120 declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the

121 request with respect to the subject lot. The association shall be liable to the seller in an amount equal to
122 the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall
123 nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural
124 guidelines of the association as to all matters arising after the date of the settlement of the sale.