

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 334

An Act to amend and reenact §§ 54.1-2346, 54.1-2347, 54.1-2349, 54.1-2353, 55-79.74:1, 55-79.97, 55-79.97:1, 55-509, 55-509.3, 55-509.6, and 55-509.7 of the Code of Virginia, relating to common interest communities.

[H 1674]

Approved March 22, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2346, 54.1-2347, 54.1-2349, 54.1-2353, 55-79.74:1, 55-79.97, 55-79.97:1, 55-509, 55-509.3, 55-509.6, and 55-509.7 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2346. License required; certification of employees; renewal; provisional license.

A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this chapter prior to engaging in such management services.

B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111.

C. On or after July 1, ~~2011~~ 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be \$10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

F. The Board shall issue a provisional license to any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009. Such provisional license ~~will~~ *shall* expire on June 30, ~~2011~~ 2012, and ~~may~~ *shall* not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.

§ 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this chapter shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;

2. An employee of an association from providing management services for that association's common interest community;

3. A resident of a common interest community acting without compensation from providing management services for that common interest community;

4. A resident of a common interest community from providing bookkeeping, billing, or ~~record keeping~~ *recordkeeping* services for that common interest community for compensation, provided the *blanket* fidelity bond or *employee dishonesty insurance policy* maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;

5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;

6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;

7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) \$1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding calendar year. For the purposes of clause (ii), no minimum payment shall be less than \$10. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program *as developed by the Virginia Association of Realtors or other organization*, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who

participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529;

4. Approve the criteria for accredited common interest community manager training programs;
5. Approve accredited common interest community manager training programs;
6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter; and
7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.

B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this chapter, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this chapter or 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, any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management

services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager; and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management ~~Information~~ Recovery Fund as a cost of administering the Fund pursuant to ~~§ 55-530~~ § 55-530.1, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of

such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

§ 55-79.74:1. Books, minutes and records; inspection.

A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C and D, upon request, any unit owner shall be provided a copy of such records and minutes. 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 unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. 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 unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if such books and records 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 condominium instruments or rules and regulations promulgated pursuant to § 55-513 by the executive organ;
5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is 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 executive organ held pursuant to subsection C of § 55-79.75;
8. Documentation, correspondence or management or executive organ reports compiled for or on behalf of the unit owners' association or the executive organ by its agents or committees for consideration by the executive organ in executive session; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof.

§ 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate *or being notified that the resale certificate will not be available*, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate 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 resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered or delivered by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

- a. Hand delivery;
- b. 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;
- c. 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
- d. 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 unit owner shall cause any deposit to be returned promptly to the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and, if applicable, an appropriate statement pursuant to § 55-79.85;
2. A statement of any expenditure of funds approved by the unit owners' association or the executive organ which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;
3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition and maintenance of the condominium unit and the use of the common elements, and the status of the account;
4. A statement whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;
5. The current reserve study report or a summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive organ;
6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;
7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit owners' association is a party which either could or would have a material impact on the unit owners' association or the unit owners or which relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including the fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, are or are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the unit owners' association and the amendments thereto;

11. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. A copy of any approved minutes of the executive organ and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § 55-79.93:1; which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing;

15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling; and

16. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, time, place, and manner of placement or display of such flag.

Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

The resale certificate shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or his authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or his authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or his authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or his authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or his authorized agent to pay any fees to use the provider's electronic network or system. If the seller or his authorized agent asks that the resale certificate be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the resale certificate in electronic format at no additional charge.

E. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

F. The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs; ~~or~~
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; *or*
4. *A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.*

G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

§ 55-79.97:1. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required § 55-79.97, and for such other services as are set out in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed \$100;
2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150 for no more than two hard copies, or (ii) electronic format, a fee not to exceed \$125, for no more than two electronic copies. Only one fee shall be charged for the preparation and delivery of the resale certificate;

3. At the option of the seller or his authorized agent, with the consent of the unit owners' association

or the common interest community manager, expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed \$50;

4. At the option of the seller or his authorized agent, an additional hard copy of the resale certificate, a fee not to exceed \$25 per hard copy;

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the resale certificate; and

6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee not to exceed \$50.

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made.

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

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

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requestor, payable at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 90 45 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be assessed against the unit owner, shall be the personal obligation of the unit owner, and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the declaration and § 55-79.83. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section 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.

G. If a resale certificate has been issued 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 or the purchaser or his authorized agent, may request a resale certificate update. The requestor shall specify whether the resale certificate 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 resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requestor shall specify whether the 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 financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' 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 unit owners' association. If the requestor asks that the specified update be provided in electronic format,

neither the unit owners' association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners' 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 unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate substantially in the form provided in this section 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 unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

§ 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, 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.

"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.

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

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"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.

§ 55-509.3. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55-509.6 or 55-509.7 that is not expressly authorized in those sections.

§ 55-509.6. Fees for disclosure packet; professionally managed associations.

A. ~~The~~ A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required § 55-509.5, and for such other services as set out in this section. The seller or his authorized agent shall specify whether the disclosure packet shall be delivered electronically or in hard copy, and shall specify the complete contact information for 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.

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

1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed \$100;

2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed \$125 for no more than two electronic copies. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

3. At the option of the seller or his authorized agent, with the consent of the association or the common interest community manager, expediting the inspection, preparation and delivery of the disclosure packet, an additional expedite fee not to exceed \$50;

4. At the option of the seller or his authorized agent, an additional hard copy of the disclosure packet, a fee not to exceed \$25 per hard copy;

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet; and

6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed \$50.

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

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

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

D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the association disclosure packet, except for the costs of any disclosure packet update or financial update, which costs shall be the responsibility of the requestor, payable at settlement. Neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time of the request is made for the association disclosure packet.

E. If settlement does not occur within ~~90~~ 45 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, 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 be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section 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.

G. If an association disclosure packet has been issued for a lot 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, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet 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.

H. The settlement agent may request a financial update. The requestor shall specify whether the 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 financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the association or the common interest community manager perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time 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 the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. 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. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When an association 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 the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55-509.5, failure to provide the association disclosure packet substantially in the form provided in this section 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 preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

§ 55-509.7. Fees for disclosure packets; associations not professionally managed.

A. ~~The~~ *An association that is not professionally managed* may charge a fee for the preparation and issuance of the association disclosure packet required by § 55-509.5. Any fee shall reflect the actual cost of the preparation of the association disclosure 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 association disclosure packet shall be delivered electronically or in 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, 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.

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

C. If an association disclosure packet has been issued for a lot 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, or the purchaser or his authorized agent may request a disclosure packet update.

The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request therefor.

D. The settlement agent may request a financial update. The requestor shall specify whether the 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 financial update shall be delivered within three business days of the written request therefor.

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

F. No association 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, the association shall not 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.

G. 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 the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

H. If the association has been requested to furnish the association disclosure packet required by this section, failure to provide the association disclosure packet substantially in the form provided in this section 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 shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.