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HOUSE BILL NO. 1741

House Amendments in [] - February 7, 2011

A *BILL to amend and reenact §§ 55-79.74:1 and 55-510 of the Code of Virginia, relating to common interest communities; charges for access to association books and records.*

Patron Prior to Engrossment—Delegate Bulova

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-79.74:1 and 55-510 of the Code of Virginia are amended and reenacted as follows:**

§ 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;

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. *Charges may be imposed only in accordance with a cost schedule adopted by the executive organ in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.*

§ 55-510. Access to association records; association meetings; notice.

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

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59 B. Subject to the provisions of subsection C and so long as the request is for a proper purpose
60 related to his membership in the association, all books and records kept by or on behalf of the
61 association, shall be available for examination and copying by a member in good standing or his
62 authorized agent including but not limited to:

63 1. The association's membership list and addresses, which shall not be used for purposes of pecuniary
64 gain or commercial solicitation; and

65 2. The actual salary of the six highest compensated employees of the association earning over
66 \$75,000 and aggregate salary information of all other employees of the association; however, individual
67 salary information shall not be available for examination and copying during the declarant control
68 period.

69 This right of examination shall exist without reference to the duration of membership and may be
70 exercised (i) only during reasonable business hours or at a mutually convenient time and location and
71 (ii) upon five days' written notice reasonably identifying the purpose for the request and the specific
72 books and records of the association requested.

73 C. Books and records kept by or on behalf of an association may be withheld from inspection and
74 copying to the extent that they concern:

75 1. Personnel matters relating to specific, identified persons or a person's medical records;

76 2. Contracts, leases, and other commercial transactions to purchase or provide goods or services,
77 currently in or under negotiation;

78 3. Pending or probable litigation. Probable litigation means those instances where there has been a
79 specific threat of litigation from a party or the legal counsel of a party;

80 4. Matters involving state or local administrative or other formal proceedings before a government
81 tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to
82 § 55-513;

83 5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by
84 the attorney-client privilege or the attorney work product doctrine;

85 6. Disclosure of information in violation of law;

86 7. Meeting minutes or other confidential records of an executive session of the board of directors
87 held in accordance with subsection C of § 55-510.1;

88 8. Documentation, correspondence or management or board reports compiled for or on behalf of the
89 association or the board by its agents or committees for consideration by the board in executive session;
90 or

91 9. Individual unit owner or member files, other than those of the requesting lot owner, including any
92 individual lot owner's or member's files kept by or on behalf of the association.

93 D. Prior to providing copies of any books and records to a member in good standing under this
94 section, the association may impose and collect a charge, reflecting the reasonable costs of materials and
95 labor, not to exceed the actual costs thereof. *Charges may be imposed only in accordance with a cost*
96 *schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall*
97 *(i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and*
98 *(iii) be provided to such requesting member at the time the request is made.*

99 E. Notwithstanding the provisions of subsections B and C, all books and records of the association,
100 including individual salary information for all employees and payments to independent contractors, shall
101 be available for examination and copying upon request by a member of the board of directors in the
102 discharge of his duties as a director.

103 F. Meetings of the association shall be held in accordance with the provisions of the bylaws at least
104 once each year after the formation of the association. The bylaws shall specify an officer or his agent
105 who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven
106 days in advance of any other meeting, send to each member notice of the time, place, and purposes of
107 such meeting. Notice shall be sent by United States mail to all members at the address of their
108 respective lots unless the member has provided to such officer or his agent an address other than the
109 address of the member's lot; or notice may be hand delivered by the officer or his agent, provided the
110 officer or his agent certifies in writing that notice was delivered to the member. Except as provided in
111 subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i)
112 within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such
113 minutes are distributed to board members as part of an agenda package for the next meeting of the
114 board of directors, whichever occurs first.

115 [2. That the provisions of this act shall become effective on July 1, 2012.]