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HOUSE BILL NO. 2289

Offered January 12, 2011
Prefiled January 12, 2011

A BILL to amend and reenact §§ 16.1-77, 55-79.80:2 and 55-513 of the Code of Virginia, relating to common interest communities; rules violations; jurisdiction of general district courts.

Patron—Sickles

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-77, 55-79.80:2 and 55-513 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-77. Civil jurisdiction of general district courts.

Except as provided in Article 5 (§ 16.1-122.1 et seq.) of this chapter, each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person that would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed $4,500 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds $4,500 but does not exceed $15,000, exclusive of interest and any attorney's fees contracted for in the instrument. However, this $15,000 limit shall not apply with respect to distress warrants under the provisions of § 55-230, cases involving liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving forfeiture of a bond pursuant to § 19.2-143.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed $15,000 exclusive of interest and any attorney's fees contracted for in the instrument.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease proved to be owing where the premises were used by the occupant primarily for business, commercial or agricultural purposes. Any counter-claim or cross-claim shall arise out of the same use of the property for business, commercial or agricultural purposes.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code of Virginia.

(5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the disposition of an earnest money deposit pursuant to a real estate purchase contract. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment, by warrant in debt, or by other uniform court form established by the Supreme Court of Virginia. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or § 2.2-3809 of the Government Data Collection and Dissemination Practices Act, for writs of mandamus or for injunctions.

(7) Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate habitual offenders pursuant to the provisions of Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title 46.2.

(8) Jurisdiction to try and decide cases alleging a civil violation described in § 18.2-76.

(9) Jurisdiction to try and decide any cases pursuant to § 55-79.80:2 of the Condominium Act (§ 55.79.39 et seq.) or § 55-513 of the Property Owners' Association Act (§ 55-508 et seq.).

§ 55-79.80:2. Assessment of charges for violations; suspension of services for failure to pay

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assessments; hearing.

A. The unit owners' association shall have the power, to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments which are more than ~~sixty~~ *60* days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests or other invitees are responsible.

B. Before any such suspension or charges may be imposed, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

Notice of such hearing, including the charges or other sanctions that may be imposed, shall, at least ~~fourteen~~ *14* days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address or addresses required for notices of meetings pursuant to § 55-79.75. *Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75.*

The amount of any charges so assessed shall not exceed ~~fifty dollars~~ *$50*for a single offense, or ~~ten dollars~~ *$10* per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55-79.84. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding ~~ninety~~ *90* days.

After the date a lawsuit is filed *in the general district or circuit court by (i) the unit owners' association, by and through its counsel to collect the charges, obtain injunctive relief and correct the violation or (ii) the unit owner* challenging any such charges, no additional charges shall accrue. *The prevailing party shall be entitled to reasonable attorney fees and costs.* If the court rules in favor of the unit owners' association, it shall be entitled to collect, *in addition to reasonable attorney fees and costs,* such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. *In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.*

~~The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75 within seven days of the hearing.~~

In any suit filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the unit owners' association's sworn affidavit.

C. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

§ 55-513. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose, shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or damages, during which the court may award to the association court costs and reasonable ~~attorneys'~~ *attorney* fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

Before any such charges or suspension may be imposed, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents. Notice of a hearing, including the charges or other sanctions that may be imposed, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the

address of record with the association at least ~~fourteen~~ *14* days prior to the hearing. *Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.*

The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed ~~50~~ ~~dollars~~ *$50* for a single offense or ~~10~~ ~~dollars~~ *$10* per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

After the date a lawsuit is filed *in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges, obtain injunctive relief and correct the violation or (ii) the lot owner* challenging any such charges, no additional charges shall accrue. *The prevailing party shall be entitled to reasonable attorney fees and costs.* If the court rules in favor of the association, it shall be entitled to collect, *in addition to reasonable attorney fees and costs,* such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. *In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.*

~~The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association within seven days of the hearing.~~

In any suit filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

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