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SENATE BILL NO. 1253

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 55-509.2, 55-509.5, and 55-509.10 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-509.1:1, relating to the Virginia Property Owners' Association Act; control of association by declarant.*

Patrons—Vogel; Delegate: May

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-509.2, 55-509.5, and 55-509.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-509.1:1 as follows:

§ 55-509.1:1. Period of declarant control; rights of declarant; limitation on amendment to declaration.

A. The declaration may authorize the declarant to appoint and remove some or all of the members of the board of directors or to exercise powers and responsibilities otherwise assigned to the board of directors or the association until no later than three months after 80 percent of all lots that the declarant has reserved the right to develop in all phases of development have been conveyed to a person other than a declarant.

B. The declarant shall have the right to develop all additional lots in accordance with provisions in effect at the time of transfer of control. To the extent so provided in the declaration or bylaws, the declarant, either directly or through a designee, shall have the right to a seat on the board of directors of the association until such time as all lots have been conveyed to a person other than a declarant or a builder.

C. Except to the extent the declaration expressly provides otherwise, if there is any lot owner other than the declarant, no declarant shall amend the declaration to extend the period of declarant control including the power to appoint and remove some or all of the members of the board of directors or to exercise powers and responsibilities otherwise assigned to the board of directors or the association unless such amendment is agreed to by 100 percent of the votes of the association.

§ 55-509.2. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors are owners of improved lots in the association *other than the declarant* and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed sixty days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (vi) any contracts in which the association is a contracting party; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property.

If the association is managed by a common interest community manager in which the declarant, or its principals, have no pecuniary interest or management role, then such common interest community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

§ 55-509.5. Contents of association disclosure packet; delivery of packet.

A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or his authorized agent, an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

- 59 1. The name of the association and, if incorporated, the state in which the association is incorporated
60 and the name and address of its registered agent in Virginia;
- 61 2. A statement of any expenditure of funds approved by the association or the board of directors that
62 shall require an assessment in addition to the regular assessment during the current year or the
63 immediately succeeding fiscal year;
- 64 3. A statement, including the amount of all assessments and any other mandatory fees or charges
65 currently imposed by the association, together with any post-closing fee charged by the common interest
66 community manager, if any, and associated with the purchase, disposition, and maintenance of the lot
67 and to the right of use of common areas, and the status of the account;
- 68 4. A statement of whether there is any other entity or facility to which the lot owner may be liable
69 for fees or other charges;
- 70 5. The current reserve study report or summary thereof, a statement of the status and amount of any
71 reserve or replacement fund, and any portion of the fund allocated by the board of directors for a
72 specified project;
- 73 6. A copy of the association's current budget or a summary thereof prepared by the association, and a
74 copy of its statement of income and expenses or statement of its financial position (balance sheet) for
75 the last fiscal year for which such statement is available, including a statement of the balance due of any
76 outstanding loans of the association;
- 77 7. A statement of the nature and status of any pending suit or unpaid judgment to which the
78 association is a party and that either could or would have a material impact on the association or its
79 members or that relates to the lot being purchased;
- 80 8. A statement setting forth what insurance coverage is provided for all lot owners by the association,
81 including the fidelity bond maintained by the association, and what additional insurance would normally
82 be secured by each individual lot owner;
- 83 9. A statement that any improvement or alteration made to the lot, or uses made of the lot or
84 common area assigned thereto are or are not in violation of the declaration, bylaws, rules and
85 regulations, architectural guidelines and articles of incorporation, if any, of the association;
- 86 10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
87 place a sign on the owner's lot advertising the lot for sale;
- 88 11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
89 display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size,
90 place, and manner of placement or display of such flag and the installation of any flagpole or similar
91 structure necessary to display such flag;
- 92 12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any
93 rules and regulations or architectural guidelines adopted by the association;
- 94 13. *A statement setting forth information regarding the transfer of control of the board of directors*
95 *or association to the lot owners including (i) the number of lots in the recorded subdivision, (ii) the*
96 *current number of members on the board of directors, (iii) the number of members of the board of*
97 *directors who are appointed by the declarant, and (iv) the method for determining the point when the*
98 *transfer of control will take place;*
- 99 14. A copy of any approved minutes of the board of directors and association meetings for the six
100 calendar months preceding the request for the disclosure packet;
- 101 ~~14-15.~~ A copy of the notice given to the lot owner by the association of any current or pending rule
102 or architectural violation;
- 103 ~~15-16.~~ A copy of the fully completed one-page cover sheet developed by the Common Interest
104 Community Board pursuant to § 54.1-2350; and
- 105 ~~16-17.~~ Certification that the association has filed with the Common Interest Community Board the
106 annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the
107 Common Interest Community Board, and the expiration date of such filing.
- 108 B. Failure to receive copies of an association disclosure packet shall not excuse any failure to
109 comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.
- 110 C. The disclosure packet shall be delivered in accordance with the written request and instructions of
111 the seller or his authorized agent, including whether the disclosure packet shall be delivered
112 electronically or in hard copy and shall specify the complete contact information for the parties to whom
113 the disclosure packet shall be delivered. The disclosure packet required by this section, shall not, in and
114 of itself, be deemed a security within the meaning of § 13.1-501.
- 115 D. The seller or his authorized agent may request that the disclosure packet be provided in hard copy
116 or in electronic form. An association or common interest community manager may provide the
117 disclosure packet electronically; however, the seller or his authorized agent shall have the right to
118 request that the association disclosure packet be provided in hard copy. The seller or his authorized
119 agent shall continue to have the right to request a hard copy of the disclosure packet in person at the
120 principal place of business of the association. If the seller or his authorized agent requests that the

disclosure packet be provided in electronic format, neither the 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 disclosure packet be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the disclosure packet in electronic format at no additional charge.

§ 55-509.10. Exceptions to disclosure requirements.

A. The contract disclosures required by § 55-509.4 and the association disclosure packet required by § 55-509.5 shall not be provided in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot by a sale at an auction, where the association disclosure packet was made available as part of an auction package for prospective purchasers prior to the auction sale; or
5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

B. In any transaction in which an association disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the association and provide the packet to the purchaser.

C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet required by § 55-509.5 need not include the information referenced in subdivisions A 2, A 3, A 5 ~~nor~~ or A 9 of § 55-509.5, and it shall include the information referenced in subdivisions A ~~46~~ 17 of § 55-509.5 only if the association has filed an annual report prior to the date of such disclosure packet.