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HOUSE BILL NO. 1213

Offered January 19, 2012

A *BILL to amend and reenact §§ 55-79.80:2, 55-79.84, and 55-79.97 of the Code of Virginia, relating to the Virginia Condominium Act; assessment of charges for violations; lien for assessments.*

Patron—Scott, J.M.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.80:2, 55-79.84, and 55-79.97 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.80:2. Assessment of charges for violations; suspension of services for failure to pay 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 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 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 \$50 for a single offense, or \$10 per diem for any offense of a continuing nature~~ *be reasonable in consideration of the seriousness of the violation and the history of previous violations*, 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 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. If the court rules in favor of the unit owners' association, it shall be entitled to collect 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.

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.

§ 55-79.84. Lien for assessments.

A. The unit owners' association shall have *the right to file* a lien on every condominium unit for *current or future* unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The said lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments ~~and securing institutional lenders~~. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any

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59 court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion
60 of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any
61 such memorandum shall be indexed in the general index to deeds, and such general index shall identify
62 the lien as a lien for condominium assessments.

63 C. The unit owners' association, in order to perfect the lien given by this section, shall file ~~before the~~
64 ~~expiration of 90 days from the time the first such assessment became due and payable~~ in the clerk's
65 office of the circuit court in the county or city in which such condominium is situated, a memorandum,
66 verified by the oath of the principal officer of the unit owners' association, or such other officer or
67 officers as the condominium instruments may specify, which contains the following:

- 68 1. A description of the condominium unit in accordance with the provisions of § 55-79.47.
- 69 2. The name or names of the persons constituting the unit owners of that condominium unit.
- 70 3. The amount of unpaid assessments currently due or past due together with the date when each fell
71 due.

- 72 4. The date of issuance of the memorandum.

73 It shall be the duty of the clerk in whose office such memorandum is filed as hereinabove provided
74 to record and index the same as provided in subsection B, in the names of the persons identified therein
75 as well as in the name of the unit owners' association. The cost of recording such memorandum shall be
76 taxed against the person found liable in any judgment or decree enforcing such lien.

77 D. ~~No suit to enforce any lien perfected under subsection C shall be brought or action to foreclose~~
78 ~~any lien perfected under subsection I shall be initiated after 36 months from the time when the~~
79 ~~memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit~~
80 ~~wherein such petition may be properly filed shall be regarded as the institution of a suit under this~~
81 ~~section. Nothing herein shall extend the time within which any such lien may be perfected.~~

82 E. The judgment or decree in an action brought pursuant to this section shall include, without
83 limitation, reimbursement for costs and attorneys' fees of the prevailing party. If the association prevails,
84 it may also recover interest at the legal rate for the sums secured by the lien from the time each such
85 sum became due and payable.

86 F. ~~E.~~ When payment or satisfaction is made of a debt secured by the lien perfected by subsection C,
87 said lien shall be released in accordance with the provisions of § 55-66.3. Any lien which is not so
88 released shall subject the lien creditor to the penalty set forth in subdivision A (1) of § 55-66.3. For the
89 purposes of that section, the principal officer of the unit owners' association, or such other officer or
90 officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the
91 lien creditor.

92 G. ~~F.~~ Nothing in this section shall be construed to prohibit actions at law to recover sums for which
93 subsection A creates a lien, maintainable pursuant to § 55-79.53.

94 H. ~~G.~~ Any unit owner or purchaser of a condominium unit, having executed a contract for the
95 disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount
96 of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the
97 principal officer of the unit owners' association or to such other officer as the condominium instruments
98 may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such
99 request shall extinguish the lien created by subsection A as to the condominium unit involved. Such
100 statement shall be binding on the unit owners' association, the executive organ, and every unit owner.
101 Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a
102 statement if the condominium instruments so provide.

103 I. ~~H.~~ At any time after perfecting the lien pursuant to this section, the unit owners' association may
104 sell the unit at public sale, subject to prior liens. For purposes of this section, the unit owners'
105 association shall have the power both to sell and convey the unit, and shall be deemed the unit owner's
106 statutory agent for the purpose of transferring title to the unit. A nonjudicial foreclosure sale shall be
107 conducted in compliance with the following:

- 108 1. The unit owners' association shall give notice to the unit owner prior to advertisement required by
109 subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required
110 to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the
111 notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that
112 failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in
113 the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in
114 the circuit court of the county or city where the condominium is located to assert the nonexistence of a
115 debt or any other defense of the unit owner to the sale.

- 116 2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association
117 may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's
118 office of the circuit court in the county or city in which the condominium is located. It shall be the duty
119 of the clerk in whose office such appointment is filed to record and index the same as provided in
120 subsection C, in the names of the persons identified therein as well as in the name of the unit owners'

association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner: (a) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorneys' fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date and place of any proposed sale in execution of the lien, and including the name, address and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the unit owners' association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 of this section and § 26-15. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association, its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in

connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorneys' fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale thereof or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 26-15 and every account of a sale shall be recorded pursuant to § 26-16. In addition, the accounting shall be made available for inspection and copying pursuant to § 55-79.74:1 upon the written request of the prior unit owner, current unit owner or any holder of a recorded lien against the unit at the time of the sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to *this* subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

§ 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 G 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

305 additional recipients to receive the resale certificate in electronic format at no additional charge.

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

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

310 1. A disposition of a unit by gift;

311 2. A disposition of a unit pursuant to court order if the court so directs;

312 3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or

313 4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part
314 of the auction package for prospective purchasers prior to the auction.

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