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HOUSE BILL NO. 410

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 55-79.53, 55-79.73, and 55-515 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; recovery of costs and interest.

Patrons—Watts, Scott, J.M. and Sickles

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.53, 55-79.73, and 55-515 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.53. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55-79.80. ~~The Except as provided in subsection B, the prevailing party shall be entitled to recover~~ awarded reasonable attorneys' attorney fees and costs expended in the matter, and interest on the judgment as provided in § 8.01-382.

B. *In actions against a unit owner for nonpayment of assessments in which the unit owner has repeatedly failed to pay assessments levied by the unit owners' association and the prevailing party is the association or its executive organ or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A.*

C. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located, or as mutually agreed by the parties.

§ 55-79.73. Bylaws to be recorded with declaration; contents; unit owners' association; executive organ; amendment of bylaws.

A. There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive organ. If there is to be such an organ, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive organ shall be filled by a vote of a majority of the remaining members of the executive organ at a meeting of the executive organ, even though the members of the executive organ present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such organ, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive organ may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection B C of § 55-79.53.

D. In any case where an amendment to the declaration is required by subsection (b), (c) or (d) of § 55-79.56, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § 55-79.58, or shall abolish the votes appertaining to former units, as the case may be. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future

59 common expenses not specially assessed, in proportion to relative voting strengths as reflected by the
60 said amendment.

61 § 55-515. Compliance with declaration.

62 A. Every lot owner, and all those entitled to occupy a lot shall comply with all lawful provisions of
63 this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an
64 action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at
65 law or in equity, maintainable by the association, or by its ~~executive organ~~ *board of directors* or any
66 managing agent on behalf of such association, or in any proper case, by one or more aggrieved lot
67 owners on their own behalf or as a class action. ~~The~~ *Except as provided in subsection B, the* prevailing
68 party shall be entitled to recover reasonable ~~attorneys'~~ *attorney* fees ~~and~~, costs expended in the matter,
69 *and interest on the judgment as provided in § 8.01-382.*

70 B. *In actions against a lot owner for nonpayment of assessments in which the lot owner has*
71 *repeatedly failed to pay assessments levied by the association and the prevailing party is the association*
72 *or its board of directors or any managing agent on behalf of the association, the prevailing party shall*
73 *be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as*
74 *provided in subsection A.*

75 C. A declaration may provide for arbitration of disputes or other means of alternative dispute
76 resolution. Any such arbitration held in accordance with this subsection shall be consistent with the
77 provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such
78 arbitration or alternative dispute resolution shall be in the county or city in which the development is
79 located, or as mutually agreed to by the parties.