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HOUSE BILL NO. 605

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 55-513 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-510.01, relating to the Virginia Property Owners' Association Act; board of directors; duty of care; enforcement of rules.

Patron—LeMunyon

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 55-513 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-510.01 as follows:

§ 55-510.01. Board members and officers; duty of care.

A. In the performance of their duties, officers and members of the board of directors appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee.

B. Members of the board of directors elected by the association and officers appointed by the such board shall exercise the degree of care and loyalty to the association required of an officer or director under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, and shall be subject to the conflict of interest rules governing directors and officers under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1.

§ 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 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.

C. Before any such charges or suspension may be imposed pursuant to subsection B, 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 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 for a single offense or \$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~~ Except as provided by subsection D, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

D. In the case of a member's failure to comply with architectural guidelines or policies or bylaws of the association pertaining to the renovation or expansion of a structure on the member's lot, the total charges for an offense of a continuing nature may continue to be assessed so long as the total amount does not exceed an amount equal to 20 percent of the increase in the value resulting from the renovation or expansion of the structure that fails to comply with the applicable architectural guidelines or policies or bylaws of the association.

E. After the date a lawsuit is filed in the general district or circuit court by (i) the association, by

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59 and through its counsel, to collect the charges, obtain injunctive relief and correct the violation or (ii)
60 the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in
61 favor of the association, it shall be entitled to collect such charges from the date the action was filed as
62 well as all other charges assessed pursuant to this section against the lot owner prior to the action. In
63 addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to
64 abate or remedy the violation.

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