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HOUSE BILL NO. 901

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact §§ 55-79.80:2 and 55-513 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; suspension of certain owner rights for rules violations.*

Patron—Brink

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-79.80:2 and 55-513 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 that~~ 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~~ day 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 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.

§ 55-513. 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.

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

67 Before any such charges or suspension may be imposed, the member shall be given an opportunity to
68 be heard and to be represented by counsel before the board of directors or other tribunal specified in the
69 documents. Notice of a hearing, including the charges or other sanctions that may be imposed, shall be
70 hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the
71 address of record with the association at least 14 days prior to the hearing. Within seven days of the
72 hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return
73 receipt requested, to the member at the address of record with the association.

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

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

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