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SENATE BILL NO. 472

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology  
on February 6, 2012)

(Patron Prior to Substitute—Senator Locke)

A BILL to amend and reenact §§ 54.1-2349, 55-79.93, 55-79.93:1, 55-394.1, 55-504.1, 55-516.1, and 55-530 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-79.93:2 and 55-394.2, relating to common interest communities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2349, 55-79.93, 55-79.93:1, 55-394.1, 55-504.1, 55-516.1, and 55-530 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-79.93:2 and 55-394.2 as follows:

§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) \$1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding calendar year. For the purposes of clause (ii), no minimum payment shall be less than \$10. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter; and

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.

60 B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the  
61 promulgation of regulations to carry out the requirements thereof.

62 2. The Board shall also be responsible for the enforcement of this chapter, provided that the Real  
63 Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real  
64 estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter  
65 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

66 3. For purposes of enforcement of this chapter or Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et  
67 seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, any requirement for the conduct of a  
68 hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to  
69 § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

70 C. The Board is authorized to obtain criminal history record information from any state or federal  
71 law-enforcement agency relating to an applicant for licensure or certification. Any information so  
72 obtained is for the exclusive use of the Board and shall not be released to any other person or agency  
73 except in furtherance of the investigation of the applicant or with the authorization of the applicant or  
74 upon court order.

75 § 55-79.93. Annual report by declarant.

76 The declarant shall file a report in the form prescribed by the regulations of the agency within ~~thirty~~  
77 30 days of each anniversary date of the order registering the condominium. The report shall reflect any  
78 material changes in information contained in the original application for registration.

79 ~~In the event that the annual report reveals that all of the units in the condominium have been~~  
80 ~~disposed of, and that all periods for conversion or expansion have expired, the agency shall issue an~~  
81 ~~order terminating the registration of the condominium.~~

82 § 55-79.93:1. Annual report by unit owners' association.

83 A. The unit owners' association shall file an annual report in a form and at such time as prescribed  
84 by regulations of the agency. The filing of the annual report required by this section shall commence  
85 upon the termination of the declarant control period pursuant to § 55-79.74. The annual report shall be  
86 accompanied by a fixed fee in an amount established by the agency.

87 B. The agency may accept copies of forms submitted to other state agencies to satisfy the  
88 requirements of this section if such forms contain substantially the same information required by the  
89 agency.

90 C. The unit owners association shall also remit to the agency an annual payment as follows:

91 1. The lesser of:

92 a. \$1,000 or such other amount as established by agency regulation; or

93 b. Five hundredths of one percent (0.05%) of the unit owners' association's gross assessment income  
94 during the preceding ~~calendar~~ year.

95 2. For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.

96 D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of  
97 the Common Interest Community Management Fund established pursuant to § 55-529.

98 § 55-79.93:2. *Termination of registration.*

99 A. *In the event that all of the units in the condominium have been disposed of, and that all periods*  
100 *for conversion or expansion have expired, the agency shall issue an order terminating the registration of*  
101 *the condominium.*

102 B. *Notwithstanding any other provision of this chapter, the agency may administratively terminate the*  
103 *registration of a condominium if:*

104 1. *The declarant has not filed an annual report in accordance with § 55-79.93 for three or more*  
105 *consecutive years; or*

106 2. *The declarant's registration with the State Corporation Commission, if applicable, has not been*  
107 *active for five or more consecutive years.*

108 § 55-394.1. Annual report; amendments.

109 A. The developer shall file a report in the form prescribed by the Board's regulations by June 30 of  
110 each year the registration is effective. The developer of any time-share project initially registered with  
111 the Board between January and June shall not be required to file an annual report for the year in which  
112 it was initially registered. The report shall reflect any material changes in information contained in the  
113 original application for registration or in the immediately preceding annual report, whichever is later,  
114 and shall be accompanied by the appropriate fee established by the Board's regulations or pursuant to  
115 § 55-392.1.

116 B. During the developer control period in a time-share estate program, the developer shall file a copy  
117 of the unit owners' association annual report required by § 55-370.1 along with the annual report  
118 required by this section.

119 C. The developer shall amend or supplement its registration with the Board to report any material  
120 change in the information required by §§ 55-374 and 55-391.1. Such amendments or supplemental  
121 information shall be filed with the Board within ~~twenty~~ 20 business days after the occurrence of the

122 material change.

123 D. In a time-share estate program, if the annual report indicates that the developer has transferred  
124 title to the time-share owners' association and that no further development rights exist, the Board shall  
125 issue an order terminating the registration of time-share projects.

126 E. The Board shall issue an order terminating the registration of a time-share project upon  
127 application by the developer in which the developer states that no further development right of the  
128 project is anticipated and that the developer has ceased sales of time-shares at the project.

129 § 55-394.2. Termination of registration.

130 A. In a time-share estate program, if the annual report indicates that the developer has transferred  
131 title to the time-share owners' association and that no further development rights exist, the Board shall  
132 issue an order terminating the registration of time-share projects.

133 B. The Board shall issue an order terminating the registration of a time-share project upon  
134 application by the developer in which the developer states that no further development right of the  
135 project is anticipated and that the developer has ceased sales of time-shares at the project.

136 C. Notwithstanding any other provisions of this chapter, the Board may administratively terminate  
137 the registration of a time-share project if:

138 1. The developer has not filed an annual report in accordance with § 55-394.1 for three or more  
139 consecutive years; or

140 2. The developer's registration with the State Corporation Commission, if applicable, has not been  
141 active for five or more consecutive years.

142 § 55-504.1. Annual report by associations.

143 A. The association shall file an annual report in a form and at such time as prescribed by regulations  
144 of the agency. The filing of the annual report required by this section shall commence upon the  
145 termination of any declarant control period reserved pursuant to § 55-460. The annual report shall be  
146 accompanied by a fixed fee in an amount established by the agency.

147 B. The agency may accept copies of forms submitted to other state agencies to satisfy the  
148 requirements of this section if such forms contain substantially the same information required by the  
149 agency.

150 C. The association shall also remit to the agency an annual payment as follows:

151 1. The lesser of:

152 a. \$1,000 or such other amount as established by agency regulation; or

153 b. Five hundredths of one percent (0.05%) of the ~~unit owners' associations'~~ association's gross  
154 assessment income during the preceding calendar year.

155 2. For the purposes of ~~clause b of subsection C subdivision 1 b~~, no minimum payment shall be less  
156 than \$10.00.

157 D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of  
158 the Common Interest Community Management Fund established pursuant to § 55-529.

159 § 55-516.1. Annual report by association.

160 A. The association shall file an annual report in a form and at such time as prescribed by regulations  
161 of the Common Interest Community Board. The annual report shall be accompanied by a fixed fee in an  
162 amount established by the Board.

163 B. The Common Interest Community Board may accept copies of forms submitted to other state  
164 agencies to satisfy the requirements of this section if such forms contain substantially the same  
165 information required by the Common Interest Community Board.

166 C. The association shall also remit to the agency an annual payment as follows:

167 1. The lesser of:

168 a. \$1,000 or such other amount as established by agency regulation; or

169 b. Five hundredths of one percent (0.05%) of the ~~unit owners' associations'~~ association's gross  
170 assessment income during the preceding calendar year.

171 2. For the purposes of ~~clause b of subsection C subdivision 1 b~~, no minimum payment shall be less  
172 than \$10.00.

173 D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of  
174 the Common Interest Community Management Fund established pursuant to § 55-529.

175 § 55-530. Powers of the Board; Common interest community ombudsman; final adverse decisions.

176 A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by  
177 § 54.1-2349 and this chapter.

178 B. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community  
179 Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community  
180 Ombudsman. The Ombudsman shall be a member in good standing in the Virginia State Bar. All state  
181 agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in  
182 the performance of its duties under this chapter. The expenses for the operations of the Office of the

183 Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall  
184 be paid first from interest earned on deposits constituting the fund and the balance from the moneys  
185 collected annually in the fund.

186 C. The Office of the Common Interest Community Ombudsman shall:

187 1. Assist members in understanding their rights and the processes available to them according to the  
188 ~~declaration and bylaws of the association~~ *laws and regulations governing common interest communities*;

189 2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in  
190 person;

191 3. Provide to members and other citizens information concerning common interest communities upon  
192 request;

193 4. Make available, either separately or through an existing Internet website utilized by the Director,  
194 information as set forth in subdivision 3 and such additional information as may be deemed appropriate;

195 5. Receive the notices of ~~complaint filed~~ *final adverse decisions*;

196 6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on  
197 inquiries received, the types of assistance requested, notices of ~~complaint~~ *final adverse decisions*  
198 received, any actions taken, and the disposition of each such matter;

199 7. Upon request, assist members in ~~using the procedures and processes available to them in the~~  
200 ~~association, including nonbinding explanations of understanding the rights and processes available~~  
201 ~~under the laws or regulations governing common interest communities or interpretations thereof by the~~  
202 ~~Board,~~ and *provide* referrals to public and private agencies offering alternative dispute resolution  
203 services, with a goal of reducing and resolving conflicts among associations and their members. ~~Such~~  
204 ~~assistance may require the review of the declaration and other records of an association and the~~  
205 ~~procedures for resolving complaints required to be established by the association pursuant to subsection~~

206 E. An association shall provide such information to the Office of the Common Interest Community  
207 Ombudsman ~~within a reasonable time upon request~~;

208 8. Ensure that members have access to the services provided through the Office of the Common  
209 Interest Community Ombudsman and that the members receive timely responses from the representatives  
210 of the Office of the Common Interest Community Ombudsman to the inquiries;

211 9. Upon request to the Director by (i) any of the standing committees of the General Assembly  
212 having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the  
213 Director for dissemination to the requesting parties assessments of proposed and existing common  
214 interest community laws and other studies of common interest community issues;

215 10. Monitor changes in federal and state laws relating to common interest communities;

216 11. Provide information to the Director that will permit the Director to report annually on the  
217 activities of the Office of the Common Interest Community Ombudsman to the standing committees of  
218 the General Assembly having jurisdiction over common interest communities and to the Housing  
219 Commission. The Director's report shall be filed by December 1 of each year, and shall include a  
220 summary of significant new developments in federal and state laws relating to common interest  
221 communities each year; and

222 12. Carry out activities as the Board determines to be appropriate.

223 D. The Board may use the remainder of the interest earned on the balance of the fund and of the  
224 moneys collected annually and deposited in the fund for financing or promoting the following:

225 1. Information and research in the field of common interest community management and operation;

226 2. Expeditious and inexpensive procedures for resolving complaints about an association from  
227 members of the association or other citizens;

228 3. Seminars and educational programs designed to address topics of concern to community  
229 associations; and

230 4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

231 E. The Board shall establish by regulation a requirement that each association shall establish  
232 reasonable procedures for the resolution of written complaints from the members of the association and  
233 other citizens. Each association shall adhere to the written procedures established pursuant to this  
234 subsection when resolving association member and citizen complaints. The procedures shall include but  
235 not be limited to the following:

236 1. A record of each complaint shall be maintained for no less than one year after the association acts  
237 upon the complaint.

238 2. Such association shall provide complaint forms or written procedures to be given to persons who  
239 wish to register written complaints. The forms or procedures shall include the address and telephone  
240 number of the association or its common interest community manager to which complaints shall be  
241 directed and the mailing address, telephone number, and electronic mail address of the Office of the  
242 Common Interest Community Ombudsman. The forms and written procedures shall include a clear and  
243 understandable description of the complainant's right to give notice of adverse decisions pursuant to this  
244 section.

245 F. A complainant may give notice to the Board of any final adverse decision in accordance with  
246 regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse  
247 decision, shall be in writing on forms prescribed by the Board, shall include copies of all records  
248 pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the  
249 Director and paid directly into the state treasury and credited to the Common Interest Community  
250 Management Information Fund, § 55-530.1. The Board may, for good cause shown, waive or refund the  
251 filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the  
252 member. The Director shall provide a copy of the written notice to the association that made the final  
253 adverse decision.

254 G. The Director or his designee, may request additional information concerning any notice of  
255 ~~complaint~~ *final adverse decision* from the association that made the final adverse decision. The  
256 association shall provide such information to the Director within a reasonable time upon request. If the  
257 Director upon review determines that the final adverse decision may be in conflict with laws or  
258 regulations governing common interest communities or interpretations thereof by the Board, the Director  
259 may, in his sole discretion, provide the complainant and the association with information concerning  
260 such laws or regulations governing common interest communities or interpretations thereof by the Board.  
261 The determination of whether the final adverse decision may be in conflict with laws or regulations  
262 governing common interest communities or interpretations thereof by the Board shall be a matter within  
263 the sole discretion of the Director, whose decision is final and not subject to further review. The  
264 determination of the Director shall not be binding upon the complainant or the association that made the  
265 final adverse decision.

266 H. The Board shall issue a certificate of filing to each association which has properly filed in  
267 accordance with this title. The certificate shall include the date of registration and a unique registration  
268 number assigned by the Board.

269 I. The Board may prescribe regulations which shall be adopted, amended or repealed in accordance  
270 with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter.