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SENATE BILL NO. 628

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 23, 2012)

(Patron Prior to Substitute—Senator Herring)

A BILL to amend and reenact § 55-509.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-509.1:1, relating to the Property Owners' Association Act; limitation on certain contracts and leases by declarant.

Be it enacted by the General Assembly of Virginia:

1. That § 55-509.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-509.1:1 as follows:

§ 55-509.1:1. Limitation on certain contracts and leases by declarant.

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions thereof.

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

D. This section shall be strictly construed to protect the rights of the lot owners.

§ 55-509.2. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors other than the declarant are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed ~~sixty~~ 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; ~~(iv)~~ (vi) all association insurance policies which are currently in force; ~~(v)~~ (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; ~~(vi)~~ (viii) any contracts in which the association is a contracting party; ~~and (vii)~~ (ix) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property; and (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors.

If the association is managed by a common interest community manager in which the declarant, or its principals, have has no pecuniary interest or management role, then such common interest community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), ~~(iv)~~ (vi), and ~~(vi)~~ (viii).

2. That the provisions of § 55-509.1:1 of this act shall apply only to contracts or leases entered into on or after July 1, 2012.