

# VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

## CHAPTER 599

*An Act to amend and reenact §§ 55-79.74 and 55-79.79 of the Code of Virginia, relating to the Condominium Act; declarant control; enforcement of warranties.*

[H 2275]

Approved March 20, 2013

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 55-79.74 and 55-79.79 of the Code of Virginia are amended and reenacted as follows:**

**§ 55-79.74. Control of condominium by declarant.**

A. The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association and/or its executive organ, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive organ. The declarant or the managing agent or such other person or persons selected by the declarant to so appoint and remove officers and/or the executive organ or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive organ shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55-79.92 hereof and described pursuant to subdivision (4) of subsection (a), subdivision (2) of subsection (b), or subdivision (8) of subsection (c), of § 55-79.54.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium, three years in the case of a condominium (other than an expandable condominium) containing any convertible land, or two years in the case of any other condominium. Such time period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

*Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.*

*Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § 55-79.75 a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive organ and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § 55-79.79 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.*

~~B. C. If entered into any time prior to the expiration of the period of declarant control contemplated by subsection A hereof, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive organ upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control contemplated by subsection A hereof. Any such contract or agreement may be renewed for periods not~~

in excess of two years; however, at the end of any two-year period the unit owners' association or its executive organ may terminate any further renewals or extensions thereof. The provisions of this subsection shall not apply to any lease or leases which are referred to in § 55-79.48 or which are subject to subsection (e) of § 55-79.54.

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

~~D.~~ *E.* This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments requiring that the unit owners be parties to such contracts.

~~E.~~ *F.* If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive organ, or any officer or officers.

~~F.~~ *G.* Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the city, county or town in which the condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes, local ordinances or other deficiencies of record.

~~G.~~ *H.* Within 45 days from the expiration of the period of declarant control ~~contemplated by subsection A~~, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant including, without limitation, the following items: minute books and all rules, regulations and amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first election of the board of directors by the unit owners not to exceed 60 days from the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) any contracts in which the association is a contracting party, if any; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the condominium property.

In the event that the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information as required by clauses (i), (ii), (iv), and (vi) of this subsection.

~~H.~~ *I.* This section shall be strictly construed to protect the rights of the unit owners.

**§ 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee.**

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for two years from the date each is conveyed, and all of the common elements for two years. In the case of each unit the declarant shall also warrant that the unit is fit for habitation and constructed in a workmanlike manner so as to pass without objection in the trade. The two years referred to in this subsection shall begin as to each of the common elements whenever the same has been completed or, if later, (i) as to any common element within any additional land or

portion thereof, at the time the first unit therein is conveyed, (ii) as to any common element within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (iii) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall be commenced within (i) five years after the date such warranty period began or (ii) *one year after the formation of any warranty review committee pursuant to subsection B of § 55-79.74, whichever last occurs*. However, no such action shall be maintained against the declarant unless a written statement by the claimant or his agent, attorney or representative, of the nature of the alleged defect has been sent to the declarant, by registered or certified mail, at his last known address, as reflected in the records of the Common Interest Community Board, more than six months prior to the commencement of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, *not to exceed five months*. Sending the notice required by this subsection shall toll the statute of limitations for commencing a breach of warranty action for a period not to exceed six months.

D. *If the initial period of declarant control has been extended in accordance with subsection B of § 55-79.74, the warranty review committee (the committee) shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to § 55-79.83 if the committee determines that the assessments levied by the unit owners' association are insufficient to enable the committee reasonably to perform its functions pursuant to this subsection. The committee or the declarant shall notify the governing body of the county, city, or town in which the condominium is located of the formation of the committee, within 30 days of its formation. Within 30 days after such notice, the local governing body or an agency designated by the local governing body shall advise the chair of the committee of any outstanding violations of applicable building codes, local ordinances, or other deficiencies of record. Members of the committee shall be insured, indemnified, and subject to liability to the same extent as officers or directors under the condominium instruments or applicable law. The unit owners' association shall provide sufficient funds reasonably necessary for the committee to perform the functions set out in this subsection and to:*

1. *Engage an independent architect, engineer, legal counsel, and such other experts as the committee may reasonably determine;*

2. *Investigate whether there exists any breach of the warranty as to any of the common elements. The committee shall document its findings and the evidence that supports such findings. Such findings and evidence shall be confidential and shall not be disclosed to the declarant without the consent of the committee; and*

3. *Assert or settle in the name of the unit owners' association any claims involving the declarant's warranty on the common elements, provided (i) the committee sends the declarant at least six months prior to the expiration of the statute of limitations a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect, (ii) the declarant fails to cure the alleged defect within a reasonable time, and (iii) the declarant control period or the statute of limitations has not expired.*

E. *Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or as-build plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.*

**2. That for any condominium existing on July 1, 2013, the condominium instruments for such condominium may be amended in the manner prescribed in the relevant condominium instruments or by statute to conform to the provisions of this act.**

**3. That, within 30 days of the effective date of this act, the Common Interest Community Board shall develop the disclosure statement required in the event a declarant requests that the period of declarant control be extended in accordance with subsection B of § 55-79.74 of the Code of Virginia as amended by this act.**

**4. That an emergency exists and this act is in force from its passage.**