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HOUSE BILL NO. 1209

Offered January 19, 2012

A BILL to amend and reenact § 55-369 of the Code of Virginia, relating to the Virginia Real Estate Time-Share Act; developer control in estate programs.

Patron—Cosgrove

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 55-369 of the Code of Virginia is amended and reenacted as follows:

§ 55-369. Developer control in time-share estate program.

A. The time-share instrument for a time-share estate program shall provide for a period of time, to be called the "developer control period," during which the developer or a managing agent selected by the developer shall manage and control the time-share estate project and the common elements and units, or portions thereof, comprising it. All costs associated with the control, management, and operation of the time-share estate project during the developer control period shall belong to the developer, except for time-share estate occupancy expenses that shall, if required by the developer in the time-share instrument, be allocated only to and paid by time-share estate owners other than the developer. "Time-share estate occupancy expenses" means all costs and expenses incurred in (i) the formation, organization, operation and administration, including capital contributions thereto, of the association and both its board of directors and its members and (ii) all owners' use and occupancy of the time-share estate project including without limitation its completed and occupied time-share estate units and common elements available for use. Such costs and expenses include but are not limited to maintenance and housekeeping charges; repairs; refurbishing costs; insurance premiums, including the premium for comprehensive general liability insurance required by subdivision 8 of § 55-368; taxes; properly allocated labor, operational, and overhead costs; general and administrative expenses; managing agent's fee; utility charges and deposits; the cost of periodic repair and replacement of walls and window treatments and furnishings, including furniture and appliances; filing fees and annual registration charges of the State Corporation Commission and the Board; counsel fees and accountant charges; and reserves for any of the foregoing. Nothing shall preclude the developer, during the developer control period and at any time after the lapse of a purchaser's right of cancellation, and without regard to the recordation of the deed, provided the deed has been delivered to the purchaser or the purchaser's agent, from collecting an annual or specially assessed charge from each time-share estate owner for the payment of the time-share estate occupancy expenses by way of a "maintenance fee." However, any such funds received and not spent or any other funds received and allocated to the benefit of the association shall be transferred to the association by the developer at the termination of the developer control period.

B. ~~Fee~~ Except to the extent the time-share instrument expressly provides otherwise, fee simple title to the common elements; shall be transferred to the time-share estate owners' association, free of charge, no later than at such time as the developer either (i) transfers to purchasers legal or equitable ownership of at least ~~ninety~~ 90 percent of the time-share estates or ~~completes~~, excluding any reacquisition by the developer; (ii) is no longer the beneficiary on deeds of trust secured of at least 10 percent of the time-share estates; or (iii) has completed all of the promised common elements and facilities comprising the time-share estate project, whichever occurs later. The developer may, but shall not be required to, make such transfer when the period has ended for a phase or portion of the time-share estate project. The transfer herein required of the developer shall not exonerate ~~it~~ the developer from the responsibility of completion of the promised and incomplete common elements once the transfer occurs. Upon transfer of the time-share project or portion to the association, the developer control period for such project or portion thereof shall terminate.

INTRODUCED

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