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HOUSE BILL NO. 1479

Offered January 9, 2013

Prefiled January 2, 2013

A BILL to amend and reenact §§ 55-79.75, 55-510, and 55-510.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 26 of Title 55 a section numbered 55-509.3:1, relating to the Condominium and the Property Owners' Association Acts; agenda to be included in meeting notices; contents of declaration for property owners' associations.

Patron—Farrell

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.75, 55-510, and 55-510.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 26 of Title 55 a section numbered 55-509.3:1 as follows:

§ 55-79.75. Meetings of unit owners' associations and executive organ.

A. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting, *which notice shall also include a copy of the agenda for the meeting*. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units unless the unit owner has provided to such officer or his agent an address other than the address of the unit; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the person of the unit owner. *Failure to include a copy of the agenda in the notice for a meeting shall render null and void any action taken by the unit owners' association.*

In lieu of delivering notice as specified in the preceding paragraph of this subsection, such officer or his agent may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the unit owner to whom the notice is given, provided the officer or his agent certifies in writing that notice was sent.

B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

Notice of the time, date, and place of each meeting of the executive organ or of any subcommittee or other committee thereof, and of each meeting of a subcommittee or other committee of the unit owners' association, *and a copy of the agenda for any such meeting* shall be published where it is reasonably calculated to be available to a majority of the unit owners. *Failure to include a copy of the agenda in the notice for a meeting shall render null and void any action taken by the executive organ or any subcommittee or other committee thereof.*

A unit owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the executive organ or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the executive organ, or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the (i) executive organ or any subcommittee or other committee thereof or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive organ or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of

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59 the unit owners' association at the same time such documents are furnished to the members of the
60 executive organ.

61 Any unit owner may record any portion of a meeting required to be open. The executive organ or
62 subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the
63 placement and use of equipment necessary for recording a meeting to prevent interference with the
64 proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is
65 being recorded.

66 If a meeting of the executive organ is conducted by telephone conference or video conference or
67 similar electronic means, at least two board members shall be physically present at the meeting place
68 included in the notice. The audio equipment shall be sufficient for any member in attendance to hear
69 what is said by any board member participating in the meeting who is not physically present.

70 Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for
71 the election of officers.

72 C. The executive organ or any subcommittee or other committee thereof may convene in executive
73 session to consider personnel matters; consult with legal counsel; discuss and consider contracts,
74 probable or pending litigation and matters involving violations of the condominium instruments or rules
75 and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants,
76 guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to
77 the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive
78 session. The motion shall state specifically the purpose for the executive session. Reference to the
79 motion and the stated purpose for the executive session shall be included in the minutes. The executive
80 organ shall restrict the consideration of matters during such portions of meetings to only those purposes
81 specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or
82 agreed to in executive session shall become effective unless the executive organ or subcommittee or
83 other committee thereof, following the executive session, reconvenes in open meeting and takes a vote
84 on such contract, motion or other action which shall have its substance reasonably identified in the open
85 meeting. The requirements of this section shall not require the disclosure of information in violation of
86 law.

87 D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a
88 designated period of time during a meeting to allow unit owners an opportunity to comment on any
89 matter relating to the unit owners' association. During a meeting at which the agenda is limited to
90 specific topics or at a special meeting, the executive organ may limit the comments of unit owners to
91 the topics listed on the meeting agenda.

92 **§ 55-509.3:1. Contents of declaration.**

93 A. The declaration for every association shall contain the following:

94 1. The name of the association;

95 2. The name of the city or county in which the association is located;

96 3. A legal description by metes and bounds of the real estate subject to the declaration;

97 4. A description or delineation of all lots subject to the declaration;

98 5. A statement of the maximum number of lots that the declarant reserves the right to create;

99 6. A description or delineation of all common areas;

100 7. A description of any development rights and other special declarant rights reserved by the
101 declarant, together with a legally sufficient description of the real estate to which each of those rights
102 applies, and a time limit within which each of those rights shall be exercised;

103 8. If any development right may be exercised with respect to different parcels of real estate at
104 different times, a statement to that effect together with (i) either a statement fixing the boundaries of
105 those portions and regulating the order in which those portions may be subjected to the exercise of each
106 development right or a statement that no assurances are made in those regards and (ii) a statement as
107 to whether, if any development right is exercised in any portion of the real estate subject to that
108 development right, that development right shall be exercised in all or in any other portion of the
109 remainder of that real estate;

110 9. Any other conditions or limitations under which the rights described in subdivision 8 may be
111 exercised or will lapse;

112 10. The amount of the annual assessment and when it is to be paid;

113 11. Any other mandatory payment of money in connection with the provision of maintenance or
114 services for the benefit of all of the lots, the owners or occupants of the lots, or the common area;

115 12. The vote in the association allocated to each lot;

116 13. Any restrictions on the use, occupancy, or alienation of the lots;

117 14. The recording date for recorded easements and licenses appurtenant to or included in the
118 development or to which any portion of the development is or may become subject by virtue of a
119 reservation in the declaration; and

120 15. Such other matters as the declarant deems appropriate.

- 121 *B. If the development contains any convertible land, the declaration shall also contain the following:*
 122 *1. A legal description by metes and bounds of each convertible land within the development;*
 123 *2. A statement of the maximum number of lots that may be created within each such convertible*
 124 *land; and*
 125 *3. A description of all other improvements that may be made on each convertible land within the*
 126 *development.*
 127 *C. If the development is expandable, the declaration shall also contain the following:*
 128 *1. The explicit reservation of an option to expand the development.*
 129 *2. A statement of any limitations on that option, including, without limitation, a statement as to*
 130 *whether the consent of any lot owners shall be required, and if so, a statement as to the method*
 131 *whereby such consent shall be ascertained; or a statement that there are no such limitations.*
 132 *3. A time limit, not exceeding 10 years from the recording of the declaration, upon which the option*
 133 *to expand the development shall expire, together with a statement of the circumstances, if any, that will*
 134 *terminate that option prior to the expiration of the time limit so specified. After the expiration of any*
 135 *period of declarant control reserved, such time limit may be extended by an amendment to the*
 136 *declaration made pursuant to § 55-515.1.*
 137 *4. A legal description by metes and bounds of all land that may be added to the development,*
 138 *henceforth referred to as "additional land."*
 139 *5. A statement as to whether, if any of the additional land is added to the development, all of it or*
 140 *any particular portion of it must be added, and if not, a statement of any limitations as to what portions*
 141 *may be added or a statement that there are no such limitations.*
 142 *6. A statement as to whether portions of the additional land may be added to the development at*
 143 *different times, together with any limitations fixing the boundaries of those portions by legal descriptions*
 144 *setting forth the metes and bounds thereof or regulating the order in which they may be added to the*
 145 *development.*
 146 *7. A statement of any limitations as to the locations of any improvements that may be made on any*
 147 *portions of the additional land added to the development, or a statement that no assurances are made in*
 148 *that regard.*
 149 *8. A statement of the maximum number of lots that may be created on the additional land. If*
 150 *portions of the additional land may be added to the development and the boundaries of those portions*
 151 *are fixed in accordance with subdivision 6, the declaration shall also state the maximum number of lots*
 152 *that may be created on each such portion added to the development. If portions of the additional land*
 153 *may be added to the development and the boundaries of those portions are not fixed in accordance with*
 154 *subdivision 6, then the declaration shall also state the maximum number of lots per acre that may be*
 155 *created on any such portion added to the development.*
 156 *9. A statement, with respect to the additional land and to any portion or portions thereof that may*
 157 *be added to the development, of the maximum percentage of the aggregate land and floor area of all*
 158 *lots that may be created thereon that may be occupied by lots not restricted exclusively to residential*
 159 *use.*
 160 *10. A statement of the extent to which any structures erected on any portion of the additional land*
 161 *added to the development will be compatible with structures on the submitted land in terms of quality of*
 162 *construction, the principal materials to be used, and architectural style, or a statement that no*
 163 *assurances are made in those regards.*
 164 *11. A description of all other improvements that will be made on any portion of the additional land*
 165 *added to the development, or a statement of any limitations as to what other improvements may be*
 166 *made thereon, or a statement that no assurances are made in that regard.*
 167 *12. A statement that any lots created on any portion of the additional land added to the development*
 168 *will be substantially identical to the lots on the submitted land, or a statement of any limitations as to*
 169 *what types of lots may be created thereon, or a statement that no assurances are made in that regard.*
 170 *13. A description of the declarant's reserved right, if any, to create limited common areas within any*
 171 *portion of the additional land added to the development, or to designate common areas therein that may*
 172 *subsequently be assigned as limited common areas, in terms of the types, sizes, and maximum number of*
 173 *such elements within each such portion, or a statement that no assurances are made in those regards.*
 174 *D. If the development is contractible, the declaration shall also contain the following:*
 175 *1. The explicit reservation of an option to contract the development.*
 176 *2. A statement of any limitations on that option, including, without limitation, a statement as to*
 177 *whether the consent of any lot owners shall be required, and if so, a statement as to the method*
 178 *whereby such consent shall be ascertained; or a statement that there are no such limitations.*
 179 *3. A time limit, not exceeding 10 years from the recording of the declaration, upon which the option*
 180 *to contract the development shall expire, together with a statement of the circumstances, if any, that will*
 181 *terminate that option prior to the expiration of the time limit so specified.*

182 4. A legal description by metes and bounds of all land that may be withdrawn from the development,
183 henceforth referred to as "withdrawable land."

184 5. A statement as to whether portions of the withdrawable land may be withdrawn from the
185 development at different times, together with any limitations fixing the boundaries of those portions by
186 legal descriptions setting forth the metes and bounds thereof or regulating the order in which they may
187 be withdrawn from the development.

188 6. A legal description by metes and bounds of all of the submitted land to which the option to
189 contract the development does not extend.

190 E. If the development is a leasehold development, then with respect to any ground lease or other
191 leases, the expiration or termination of which will or may terminate or contract the development, the
192 declaration shall set forth the city or county wherein the same are recorded and the deed book and
193 page number where the first page of each such lease is recorded, and the declaration shall also contain
194 the following:

195 1. The date upon which each such lease is due to expire.

196 2. A statement as to whether any land or improvements will be owned by the lot owners in fee
197 simple, and if so, either (i) a description of the same, including without limitation a legal description by
198 metes and bounds of any such land, or (ii) a statement of any rights the lot owners shall have to
199 remove such improvements within a reasonable time after the expiration or termination of the lease or
200 leases involved, or a statement that they shall have no such rights.

201 3. A statement of the rights the lot owners shall have to redeem the reversion or any of the
202 reversions, or a statement that they shall have no such rights; provided, that after the recording of the
203 declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have
204 any right or power to terminate any part of the leasehold interest of any lot owner who makes timely
205 payment of his share of the rent to the person or persons designated in the declaration for the receipt of
206 such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to
207 terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the
208 reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all
209 leasehold interests in the development are thus acquired or reacquired.

210 F. Wherever this section requires a legal description by metes and bounds of land that is submitted
211 to this chapter or that may be added to or withdrawn from the development, such requirement shall be
212 deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient
213 description of any easements that are submitted to this chapter or that may be added to or withdrawn
214 from the development, as the case may be. In the case of each such easement, the declaration shall
215 contain the following:

216 1. A description of the permitted use or uses.

217 2. If less than all of those entitled to the use of all of the lots may utilize such easement, a statement
218 of the relevant restrictions and limitations on utilization.

219 3. If any persons other than those entitled to the use of the lots may utilize such easement, a
220 statement of the rights of others to utilization of the same.

221 G. Wherever this section requires a legal description by metes and bounds of land that is submitted
222 to this chapter or that may be added to or withdrawn from the development, an added requirement shall
223 be a separate legally sufficient description of all lands in which the lot owners shall or may be tenants
224 in common or joint tenants with any other persons, and a separate legally sufficient description of all
225 lands in which the lot owners shall or may be life tenants. No lots shall be situated on any such lands,
226 however, and the declaration shall describe the nature of the lot owners' estate therein. No such lands
227 shall be shown on the same plat or plats showing other portions of the development but shall be shown
228 instead on separate plats.

229 **§ 55-510. Access to association records; association meetings; notice.**

230 A. The association shall keep detailed records of receipts and expenditures affecting the operation
231 and administration of the association. All financial books and records shall be kept in accordance with
232 generally accepted accounting practices.

233 B. Subject to the provisions of subsection C and so long as the request is for a proper purpose
234 related to his membership in the association, all books and records kept by or on behalf of the
235 association, shall be available for examination and copying by a member in good standing or his
236 authorized agent including but not limited to:

237 1. The association's membership list and addresses, which shall not be used for purposes of pecuniary
238 gain or commercial solicitation; and

239 2. The actual salary of the six highest compensated employees of the association earning over
240 \$75,000 and aggregate salary information of all other employees of the association; however, individual
241 salary information shall not be available for examination and copying during the declarant control
242 period.

243 This right of examination shall exist without reference to the duration of membership and may be

exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five days' written notice reasonably identifying the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55-513;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55-510.1;

8. Documentation, correspondence or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

E. Notwithstanding the provisions of subsections B and C, all books and records of the association, including individual salary information for all employees and payments to independent contractors, shall be available for examination and copying upon request by a member of the board of directors in the discharge of his duties as a director.

F. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting, *which notice shall also include a copy of the agenda for the meeting*. Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the member. *Failure to include a copy of the agenda in the notice for a meeting shall render null and void any action taken by the association.*

Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

§ 55-510.1. Meetings of the board of directors.

A. All meetings of the board of directors, including any subcommittee or other committee thereof, shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55-510.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee thereof *and a copy of the agenda for any such meeting* shall be published where it is reasonably calculated to be available to a majority of the lot owners. *Failure to include the items on the agenda in the notice for a meeting shall render null and void any action taken by the board of directors or any subcommittee or other committee thereof.*

A lot owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the lot owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any lot

owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the board of directors or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association's board of directors or any subcommittee or other committee thereof conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee thereof.

Any member may record any portion of a meeting required to be open. The board of directors or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the member recording the meeting to provide notice that the meeting is being recorded.

If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two members of the board of directors shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any member of the board of directors participating in the meeting who is not physically present.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for the election of officers.

C. The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period of time during a meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda.