

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 55-79.83 of the Code of Virginia and to amend the Code of Virginia by*  
3 *adding a section numbered 55-513.2, relating to the Condominium and Property Owners' Association*  
4 *Acts; assessments; imposition of late fees.*

5 [H 1595]

6 Approved

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

8 **1. That § 55-79.83 of the Code of Virginia is amended and reenacted and that the Code of**  
9 **Virginia is amended by adding a section numbered 55-513.2 as follows:**

10 **§ 55-79.83. Liability for common expenses; late fees.**

11 A. Except to the extent that the condominium instruments provide otherwise, any common expenses  
12 associated with the maintenance, repair, renovation, restoration, or replacement of any limited common  
13 element shall be specially assessed against the condominium unit to which that limited common element  
14 was assigned at the time such expenses were made or incurred. If the limited common element involved  
15 was assigned at that time to more than one condominium unit, however, such expenses shall be specially  
16 assessed against each such condominium unit equally so that the total of such special assessments equals  
17 the total of such expenses, except to the extent that the condominium instruments provide otherwise.

18 B. To the extent that the condominium instruments expressly so provide, any other common expenses  
19 benefiting less than all of the condominium units, or caused by the conduct of less than all those  
20 entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the  
21 condominium unit or units involved, in accordance with such reasonable provisions as the condominium  
22 instruments may make for such cases. The executive organ may impose reasonable user fees.

23 C. To the extent that the condominium instruments expressly so provide, (i) any common expenses  
24 paid or incurred in making available the same off-site amenities or paid subscription television service to  
25 some or all of the unit owners shall be assessed equally against the condominium units involved and (ii)  
26 any common expenses paid or incurred in providing metered utility services to some or all of the units  
27 shall be assessed against each condominium unit involved based on its actual consumption of such  
28 services.

29 D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C  
30 hereof shall be assessed against the condominium units in proportion to the number of votes in the unit  
31 owners' association appertaining to each such unit, or, if such votes were allocated as provided in  
32 subsection B of § 55-79.77, those common expense assessments shall be either in proportion to those  
33 votes or in proportion to the units' respective undivided interests in the common elements, whichever  
34 basis the condominium instruments specify. Such assessments shall be made by the unit owners'  
35 association annually, or more often if the condominium instruments so provide. No change in the  
36 number of votes in the unit owners' association appertaining to any condominium unit shall enlarge,  
37 diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

38 E. Except to the extent otherwise provided in the condominium instruments, if the executive organ  
39 determines that the assessments levied by the unit owners' association are insufficient to cover the  
40 common expenses of the unit owners' association, the executive organ shall have the authority to levy an  
41 additional assessment against all of the units in proportion to their respective undivided interests in the  
42 common elements. The executive organ shall give written notice of any additional assessment to the unit  
43 owners stating the amount, reasons therefor, and the due date for payment of such assessment. If the  
44 additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90  
45 days after delivery or mailing of the notice.

46 All unit owners shall be obligated to pay the additional assessment unless the unit owners by a  
47 majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in  
48 accordance with the provisions of the condominium instruments within 60 days of the delivery or  
49 mailing of the notice required by this subsection, rescind or reduce the additional assessment. No  
50 director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty  
51 if an additional assessment for the funds necessary for the director or officer to perform his fiduciary  
52 duty is rescinded by the unit owners' association in accordance with this subsection. The unit owners'  
53 association shall indemnify such director or officer against any damage resulting from any claimed  
54 breach of fiduciary duty arising therefrom.

55 F. It remains the policy of this section that neither a unit owned by the declarant nor any other unit  
56 may be exempted from assessments made pursuant to this section by reason of the identity of the unit

57 owner thereof.

58 G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby  
59 validated notwithstanding noncompliance with the first sentence of subsection D hereof, if they provide  
60 instead that the amount of all common expenses not specially assessed pursuant to subsection A, B, or C  
61 hereof shall be assessed against the condominium units in proportion to their respective undivided  
62 interests in the common elements.

63 *H. Except to the extent that the condominium instruments or rules or regulations promulgated*  
64 *pursuant thereto provide otherwise, an executive organ may impose a late fee for any assessment or*  
65 *installment thereof that is not paid within 60 days of the due date for payment of such assessment.*  
66 *Except to the extent that the condominium instruments provide otherwise, no such late fee shall exceed*  
67 *the penalty provided in § 58.1-3915.*

68 **§ 55-513.2. Assessments; late fees.**

69 *Except to the extent that the declaration or any rules or regulations promulgated pursuant thereto*  
70 *provides otherwise, the board may impose a late fee for any assessment or installment thereof that is*  
71 *not paid within 60 days of the due date for payment of such assessment. Except to the extent that the*  
72 *declaration provides otherwise, no such late fee shall exceed the penalty provided in § 58.1-3915.*