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HOUSE BILL NO. 2275

Offered January 16, 2013

A BILL to amend and reenact §§ 55-79.74 and 55-79.79 of the Code of Virginia, relating to the Condominium Act; declarant control.

Patron—Peace

Referred to Committee on General Laws

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. The time limit initially set by the condominium instruments shall not exceed ~~five~~ 10 years in the case of an expandable condominium, ~~three~~ five years in the case of a condominium (other than an expandable condominium) containing any convertible land, or ~~two~~ four 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 and a two-thirds affirmative vote conducted pursuant to the voting procedures set forth in § 55-79.71, the initial declarant control period for an expandable condominium may be extended at any time prior to its expiration, provided that it shall not exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium.*

B. 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. 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, 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. 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

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59 year, nursing services, medical services, other health-related services, board and lodging and care as
60 necessary, or any combination of such services. The rule of property law known as the rule restricting
61 unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium
62 instruments requiring that the unit owners be parties to such contracts.

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

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

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

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

91 H. This section shall be strictly construed to protect the rights of the unit owners.

92 **§ 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations**
93 **for warranty.**

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

106 B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee,
107 against structural defects, each of the units for two years from the date each is conveyed, and all of the
108 common elements for two years. In the case of each unit the declarant shall also warrant that the unit is
109 fit for habitation and constructed in a workmanlike manner so as to pass without objection in the trade.
110 The two years referred to in this subsection shall begin as to each of the common elements whenever
111 the same has been completed or, if later, (i) as to any common element within any additional land or
112 portion thereof, at the time the first unit therein is conveyed, (ii) as to any common element within any
113 convertible land or portion thereof, at the time the first unit therein is conveyed, and (iii) as to any
114 common element within any other portion of the condominium, at the time the first unit therein is
115 conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a
116 bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the
117 declarant's warranties against structural defects imposed by this subsection. For the purposes of this
118 subsection, structural defects shall be those defects in components constituting any unit or common
119 element which reduce the stability or safety of the structure below accepted standards or restrict the
120 normal intended use of all or part of the structure and which require repair, renovation, restoration, or

121 replacement. Nothing in this subsection shall be construed to make the declarant responsible for any
122 items of maintenance relating to the units or common elements.

123 C. An action for breach of any warranty prescribed by this section shall be commenced within five
124 years after the date such warranty period began. However, no such action shall be maintained against
125 the declarant unless a written statement by the claimant or his agent, attorney or representative, of the
126 nature of the alleged defect has been sent to the declarant, by registered or certified mail, at his last
127 known address, as reflected in the records of the Common Interest Community Board, more than six
128 months prior to the commencement of the action giving the declarant an opportunity to cure the alleged
129 defect within a reasonable time. ~~Sending the notice required by this subsection shall toll the statute of~~
130 ~~limitations for commencing a breach of warranty action for a period not to exceed six months~~ *If the*
131 *period of declarant control contemplated by subsection A of § 55-79.74 has not expired at least five*
132 *years and 90 days after the date such warranty period began, the statute of limitations for commencing*
133 *a breach of warranty action with respect to the common elements shall be tolled until the earlier of 120*
134 *days after (i) the expiration of the period of declarant control or (ii) the unit owners other than the*
135 *declarant form a warranty review committee consisting of persons unaffiliated with the declarant in*
136 *accordance with the provisions therefor in the condominium instruments. The condominium instruments*
137 *shall empower the warranty review committee to engage an independent architect or engineer and*
138 *independent counsel, allocate sufficient funds to perform its functions, and empower the warranty review*
139 *committee to bring an action on behalf of the unit owners' association to enforce the warranty on the*
140 *common elements.*

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