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HOUSE BILL NO. 690

Offered January 8, 2014

Prefiled January 7, 2014

A *BILL to amend the Code of Virginia by adding sections numbered 55-79.71:2, 55-79.73:2, and 55-515.2:1 and by adding in Article 3 of Chapter 26 of Title 55 a section numbered 55-516.3, relating to the Condominium and Property Owners' Association Acts; merger of developments; reformation of declaration.*

 Patron—Massie

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 55-79.71:2, 55-79.73:2, and 55-515.2:1 and by adding in Article 3 of Chapter 26 of Title 55 a section numbered 55-516.3 as follows:

§ 55-79.71:2. Merger or consolidation of condominiums; procedure.

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums are merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement of two or more condominiums to merge or consolidate pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

§ 55-79.73:2. Reformation of declaration; judicial procedure.

A. A unit owners' association may petition a court of equity in the county or city wherein the development or the greater part thereof is located to reform a declaration where the unit owners' association, acting through its executive organ, has attempted to amend the declaration using provisions outlined therein to resolve (i) inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners; (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake; or (iii) an ambiguity in the declaration with respect to an objectively verifiable fact.

B. The court shall have jurisdiction to:

1. Reform, in whole or in part, any provision of a declaration; and
 2. Correct mistakes or any other error in the declaration that may exist with respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the declaration, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided that:

1. At least three duly called meetings of the unit owners' association have been held where there have been good faith attempts to lawfully amend the declaration for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may

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59 *be accomplished in a court of equity.*

60 **§ 55-515.2:1. Reformation of declaration; judicial procedure.**

61 A. An association may petition a court of equity in the county or city wherein the development or the
62 greater part thereof is located to reform a declaration where the association, acting through its board
63 of directors, has attempted to amend the declaration using provisions outlined therein to resolve (i)
64 inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal
65 rights and responsibilities of the association or individual lot owners; (ii) scrivener's errors, including
66 incorrectly identifying the association, incorrectly identifying an entity other than the association, or
67 errors arising from oversight or from an inadvertent omission or mathematical mistake; or (iii) an
68 ambiguity in the declaration with respect to an objectively verifiable fact.

69 B. The court shall have jurisdiction to:

70 1. Reform, in whole or in part, any provision of a declaration; and

71 2. Correct mistakes or any other error in the declaration that may exist with respect to the
72 declaration for any other purpose.

73 C. A petition filed by the association with the court setting forth any inconsistency or error made in
74 the declaration, or the necessity for any change therein, shall be deemed sufficient basis for the
75 reformation, in whole or in part, of the declaration, provided that:

76 1. At least three duly called meetings of the association have been held where there have been good
77 faith attempts to lawfully amend the declaration for the reasons specified in subsection A, which
78 attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer
79 of the association; and

80 2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may
81 be accomplished in a court of equity.

82 **§ 55-516.3. Merger or consolidation of developments; procedure.**

83 A. Any two or more developments, by agreement of the lot owners as provided in subsection B, may
84 be merged or consolidated into a single development. In the event of a merger or consolidation, unless
85 the agreement otherwise provides, the resultant development shall be the legal successor, for all
86 purposes, of all of the preexisting developments, and the operations and activities of all associations of
87 the preexisting developments are merged or consolidated into a single association that holds all powers,
88 rights, obligations, assets, and liabilities of all preexisting associations.

89 B. An agreement of two or more developments to merge or consolidate pursuant to subsection A
90 shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer
91 of the association of each of the preexisting developments following the approval by the lot owners in
92 each development required to terminate that development. The agreement shall be recorded in every
93 locality in which a portion of the development is located and shall not be effective until recorded.

94 C. Every merger or consolidation agreement shall provide for the reallocation of the allocated
95 interests in the new association among the lots of the resultant development either (i) by stating the
96 reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall
97 allocated interests of the developments which are allocated to all of the lots comprising each of the
98 preexisting developments, and providing that the portion of the percentages allocated to each lot
99 formerly comprising a part of the preexisting development shall be equal to the percentages of allocated
100 interests allocated to that lot by the declaration of the preexisting development.