

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56

An Act to amend and reenact §§ 55-79.87:1, 55-79.97, 55-79.97:1, 55-509.3:1, 55-509.4, 55-509.5, and 55-509.6 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; rental of units; disclosure packets.

[H 684]

Approved

Be it enacted by the General Assembly of Virginia:  
1. That §§ 55-79.87:1, 55-79.97, 55-79.97:1, 55-509.3:1, 55-509.4, 55-509.5, and 55-509.6 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.87:1. Rental of units.  
A. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association may condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55-79.42:1.

B. Except as expressly authorized in this chapter or in the condominium instruments, no unit owners' association shall:

1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55-79.42:1;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 as a condition of approval of such a rental during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55-79.42:1;

4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit owners' association; or

5. Charge a security deposit from the unit owner or the tenant of the unit owner; or

6. Have the authority to evict a tenant of any unit owner or to require any unit owner to execute a power of attorney authorizing the unit owners' association to so evict. However, if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative with respect to any lease, the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § 55-79.77 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

C. B. The unit owners' association may require the unit owner to provide the unit owners' association with a copy of any (i) lease with a tenant or (ii) unit owners' association document completed by the unit owner or representative that discloses the names and contact information of tenant the tenants and authorized occupants under the such lease and any authorized agent of the unit owner, and vehicle information for such tenants or authorized occupants. The unit owners' association may require the unit owner to provide the unit owners' association with the tenant's acknowledgement of and consent to any rules and regulations of the unit owners' association.

C. The provisions of this section shall not apply to units owned by the unit owners' association.

§ 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not

57 available.

58 B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole  
59 remedy is to cancel the contract prior to settlement.

60 C. The information contained in the resale certificate shall be current as of a date specified on the  
61 resale certificate. A resale certificate update or a financial update may be requested as provided in  
62 § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date  
63 of the contract, if the purchaser receives the resale certificate *or is notified that the resale certificate will*  
64 *not be available* on or before the date that the purchaser signs the contract; (ii) within three days after  
65 receiving the resale certificate if the resale certificate *or notice that the resale certificate will not be*  
66 *available* is hand delivered, delivered by electronic means, or delivered by a commercial overnight  
67 delivery service or the United Parcel States Postal Service, and a receipt obtained; or (iii) within six  
68 days after the postmark date if the resale certificate *or notice that the resale certificate will not be*  
69 *available* is sent to the purchaser by United States mail.

70 Notice of cancellation shall be provided to the unit owner or his agent by one of the following  
71 methods:

72 a. Hand delivery;

73 b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which  
74 may be either a United States postal certificate of mailing or a certificate of service prepared by the  
75 sender confirming such mailing;

76 c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may  
77 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate  
78 of service prepared by the sender confirming the electronic delivery; or

79 d. Overnight delivery using a commercial service or the United States Postal Service.

80 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of  
81 cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be  
82 returned promptly to the purchaser.

83 A resale certificate shall include the following:

84 1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and,  
85 if applicable, an appropriate statement pursuant to § 55-79.85;

86 2. A statement of any expenditure of funds approved by the unit owners' association or the executive  
87 organ which shall require an assessment in addition to the regular assessment during the current or the  
88 immediately succeeding fiscal year;

89 3. A statement, including the amount, of all assessments and any other fees or charges currently  
90 imposed by the unit owners' association, together with any known post-closing fee charged by the  
91 common interest community manager, if any, and associated with the purchase, disposition and  
92 maintenance of the condominium unit and the use of the common elements, and the status of the  
93 account;

94 4. A statement whether there is any other entity or facility to which the unit owner may be liable for  
95 fees or other charges;

96 5. The current reserve study report or a summary thereof, a statement of the status and amount of  
97 any reserve or replacement fund and any portion of the fund designated for any specified project by the  
98 executive organ;

99 6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit  
100 owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal  
101 year for which a statement is available, including a statement of the balance due of any outstanding  
102 loans of the unit owners' association;

103 7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit  
104 owners' association is a party which either could or would have a material impact on the unit owners'  
105 association or the unit owners or which relates to the unit being purchased;

106 8. A statement setting forth what insurance coverage is provided for all unit owners by the unit  
107 owners' association, including the fidelity bond maintained by the unit owners' association, and what  
108 additional insurance coverage would normally be secured by each individual unit owner;

109 9. A statement that any improvements or alterations made to the unit, or the limited common  
110 elements assigned thereto, are or are not in violation of the condominium instruments;

111 10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the  
112 unit owners' association and the amendments thereto;

113 11. A statement of whether the condominium or any portion thereof is located within a development  
114 subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

115 12. A copy of the notice given to the unit owner by the unit owners' association of any current or  
116 pending rule or architectural violation;

117 13. A copy of any approved minutes of the executive organ and unit owners' association meetings for

118 the six calendar months preceding the request for the resale certificate;

119 14. Certification that the unit owners' association has filed with the Common Interest Community  
120 Board the annual report required by § 55-79.93:1; which certification shall indicate the filing number  
121 assigned by the Common Interest Community Board and the expiration date of such filing;

122 15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

123 16. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to  
124 display the flag of the United States, including, but not limited to reasonable restrictions as to the size,  
125 time, place, and manner of placement or display of such flag;

126 17. A statement setting forth any restriction, limitation, or prohibition on the right of a unit owner to  
127 install or use solar energy collection devices on the unit owner's property; and

128 18. A statement indicating any known project approvals currently in effect issued by secondary  
129 mortgage market agencies.

130 Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of  
131 the condominium instruments, articles of incorporation, or rules or regulations.

132 The resale certificate shall be delivered in accordance with the written request and instructions of the  
133 seller or ~~his~~ *the seller's* authorized agent, including whether the resale certificate shall be delivered  
134 electronically or in hard copy, at the option of the seller or ~~his~~ *the seller's* authorized agent, and shall  
135 specify the complete contact information for the parties to whom the resale certificate shall be delivered.  
136 The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate  
137 shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

138 D. The seller or ~~his~~ *the seller's* authorized agent may request that the resale certificate be provided in  
139 hard copy or in electronic form. A unit owners' association or common interest community manager may  
140 provide the resale certificate electronically; however, the seller or ~~his~~ *the seller's* authorized agent shall  
141 have the right to request that the resale certificate be provided in hard copy. The seller or ~~his~~ *the seller's*  
142 authorized agent shall continue to have the right to request a hard copy of the resale certificate in person  
143 at the principal place of business of the unit owners' association. If the seller or ~~his~~ *the seller's*  
144 authorized agent requests that the resale certificate be provided in electronic format, neither the unit  
145 owners' association nor its common interest community manager may require the seller or ~~his~~ *the seller's*  
146 authorized agent to pay any fees to use the provider's electronic network or system. The resale certificate  
147 shall not be delivered in hard copy if the ~~requestor~~ *requester* has requested delivery of such resale  
148 certificate electronically. If the resale certificate is provided electronically by a website link, the preparer  
149 shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not  
150 charge another fee during the subsequent 12-month period, except that the preparer may charge an  
151 update fee of \$50 for a financial update or for an inspection as provided in § 55-79.97:1 after the  
152 expiration of the 90-day period from the date of issuance of such certificate. If the seller or ~~his~~ *the*  
153 *seller's* authorized agent asks that the resale certificate be provided in electronic format, the seller or ~~his~~ *the*  
154 *seller's* authorized agent may request that an electronic copy be provided to each of the following  
155 named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized  
156 agent, and not more than one other person designated by the ~~requestor~~ *requester*. If so requested, the  
157 unit owners' association or its common interest community manager may require the seller or ~~his~~ *the*  
158 *seller's* authorized agent to pay the fee specified in § 55-79.97:1. ~~The~~ *Regardless of whether the resale*  
159 *certificate is delivered in paper form or electronically, the preparer of the resale packet certificate shall*  
160 *provide such resale packet certificate directly to the designated persons designated by the requester to*  
161 *the addresses or, if applicable, the email addresses provided by the requester.*

162 E. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter,  
163 the provisions and requirements of this section shall apply to any such resale of a condominium unit  
164 created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

165 F. The resale certificate required by this section need not be provided in the case of:

- 166 1. A disposition of a unit by gift;
- 167 2. A disposition of a unit pursuant to court order if the court so directs;
- 168 3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
- 169 4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part  
170 of the auction package for prospective purchasers prior to the auction.

171 G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the  
172 sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association  
173 and provide the resale certificate to the purchaser.

174 H. For purposes of this chapter:

175 "*Delivery*" means that the resale certificate is delivered to the purchaser or purchaser's authorized  
176 agent by one of the methods specified in this section.

177 "*Purchaser's authorized agent*" means any person designated by such purchaser in a ratified real  
178 estate contract for purchase and sale of residential real property or other writing designating such

179 agent.

180 "Receives, received, or receiving" the resale certificate means that the purchaser or purchaser's  
181 authorized agent has received the resale certificate by one of the methods specified in this section.

182 "Seller's authorized agent" means a person designated by such seller in a ratified real estate contract  
183 for purchase and sale of residential real property or other writing designating such agent.

184 I. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the  
185 purchaser's authorized agent shall require delivery to such agent and not to a person other than such  
186 agent. Delivery of the resale certificate may be made by the unit owner or the seller's authorized agent.

187 J. If the unit is governed by more than one association, the purchaser's right of cancellation may be  
188 exercised within the required time frames following delivery of the last resale certificate or disclosure  
189 packet.

190 **§ 55-79.97:1. Fees for resale certificate.**

191 A. The unit owners' association may charge fees as authorized by this section for the inspection of  
192 the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such  
193 other services as are set out in this section. Nothing in this chapter shall be construed to authorize the  
194 unit owners' association or common interest community manager to charge an inspection fee for a unit  
195 except as provided in this section.

196 B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

197 1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale  
198 certificate, a fee not to exceed \$100;

199 2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150  
200 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of \$125, for an  
201 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,  
202 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the  
203 requestor ~~requester~~. Only one fee shall be charged for the preparation and delivery of the resale  
204 certificate;

205 3. At the option of the seller or ~~his~~ the seller's authorized agent, with the consent of the unit owners'  
206 association or the common interest community manager, expediting the inspection, preparation, and  
207 delivery of the resale certificate, an additional expedite fee not to exceed \$50;

208 4. At the option of the seller or ~~his~~ the seller's authorized agent, an additional hard copy of the  
209 resale certificate, a fee not to exceed \$25 per hard copy;

210 5. At the option of the seller or ~~his~~ the seller's authorized agent, a fee not to exceed an amount equal  
211 to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight  
212 delivery of the resale certificate; and

213 6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of  
214 establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee  
215 not to exceed \$50.

216 Neither the unit owners' association nor its common interest community manager shall require cash,  
217 check, certified funds, or credit card payments at the time the request for the resale certificate is made.  
218 The resale certificate shall state that all fees and costs for the resale certificate shall be the personal  
219 obligation of the unit owner and shall be an assessment against the unit and collectible as any other  
220 assessment in accordance with the provisions of the condominium instruments and § 55-79.83, if not  
221 paid at settlement or within ~~45~~ 60 days of the delivery of the resale certificate, whichever occurs first.

222 For purposes of this section, an expedite fee shall only be charged if the inspection and preparation  
223 of delivery of the resale certificate are completed within five business days of the request for a resale  
224 certificate.

225 C. No fees other than those specified in this section, and as limited by this section, shall be charged  
226 by the unit owners' association or its common interest community manager for compliance with the  
227 duties and responsibilities of the unit owners' association under this section. No additional fee shall be  
228 charged for access to the unit owners' association's or common interest community manager's website.  
229 The unit owners' association or its common interest community manager shall publish and make  
230 available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or ~~his~~  
231 the seller's authorized agent will know such fees at the time of requesting the resale certificate.

232 D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the  
233 sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this  
234 section. The seller shall be responsible for all costs associated with the preparation and delivery of the  
235 resale certificate, except for the costs of any resale certificate update or financial update, which costs  
236 shall be the responsibility of the requestor ~~requester~~, payable at settlement. The settlement agent shall  
237 escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its  
238 common interest community manager shall require cash, check, certified funds, or credit card payments  
239 at the time the request is made for the resale certificate.

240 E. If settlement does not occur within ~~45~~ 60 days of the delivery of the resale certificate, or funds  
 241 are not collected at settlement and disbursed to the unit owners' association or the common interest  
 242 community manager, all fees, including those costs that would have otherwise been the responsibility of  
 243 the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale  
 244 certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment  
 245 against the unit and collectible as any other assessment in accordance with the provisions of the  
 246 condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash,  
 247 check, certified funds, or credit card, if credit card payment is an option offered by the unit owners'  
 248 association. The unit owners' association shall pay the common interest community manager the amount  
 249 due from the unit owner within 30 days after invoice.

250 F. The maximum allowable fees charged in accordance with this section shall adjust every five years,  
 251 as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the  
 252 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published  
 253 by the Bureau of Labor Statistics of the U.S. Department of Labor.

254 G. If a resale certificate has been issued within the preceding 12-month period, a person specified in  
 255 the written instructions of the seller or ~~his~~ *the seller's* authorized agent, including the seller or ~~his~~ *the*  
 256 *seller's* authorized agent or the purchaser or ~~his~~ *the purchaser's* authorized agent, may request a resale  
 257 certificate update. The ~~requestor~~ *requester* shall specify whether the resale certificate update shall be  
 258 delivered electronically or in hard copy and shall specify the complete contact information of the parties  
 259 to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of  
 260 the written request.

261 H. The settlement agent may request a financial update. The ~~requestor~~ *requester* shall specify  
 262 whether the financial update shall be delivered electronically or in hard copy and shall specify the  
 263 complete contact information of the parties to whom the update shall be delivered. The financial update  
 264 shall be delivered within three business days of the written request.

265 I. A reasonable fee for the resale certificate update or financial update may be charged by the  
 266 preparer, not to exceed \$50. At the option of the purchaser or ~~his~~ *the purchaser's* authorized agent, the  
 267 ~~requestor~~ *requester* may request that the unit owners' association or the common interest community  
 268 manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to  
 269 exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs  
 270 on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs at  
 271 settlement. Neither the unit owners' association nor its common interest community manager, if any,  
 272 shall require cash, check, certified funds, or credit card payments at the time the request is made for the  
 273 resale certificate update. The ~~requestor~~ *requester* may request that the specified update be provided in  
 274 hard copy or in electronic form.

275 J. No unit owners' association or common interest community manager may require the ~~requestor~~  
 276 *requester* to request the specified update electronically. The seller or ~~his~~ *the seller's* authorized agent  
 277 shall continue to have the right to request a hard copy of the specified update in person at the principal  
 278 place of business of the unit owners' association. If the ~~requestor~~ *requester* asks that the specified update  
 279 be provided in electronic format, neither the unit owners' association nor its common interest community  
 280 manager may require the requester to pay any fees to use the provider's electronic network or system. A  
 281 copy of the specified update shall be provided to the seller or ~~his~~ *the seller's* authorized agent.

282 K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners'  
 283 association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the  
 284 assessment account and the status of the unit with respect to any violation of the condominium  
 285 instruments as of the date of the statement unless the purchaser had actual knowledge that the contents  
 286 of the resale certificate were in error.

287 L. If the unit owners' association or its common interest community manager has been requested in  
 288 writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate  
 289 substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent  
 290 assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural  
 291 guidelines existing as of the date of the request with respect to the subject unit. The preparer of the  
 292 resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the  
 293 seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the  
 294 condominium instruments, rules and regulations, and architectural guidelines of the unit owners'  
 295 association as to all matters arising after the date of the settlement of the sale.

296 **§ 55-509.3:1. Rental of lots.**

297 A. Except as expressly authorized in this chapter or in the declaration or as otherwise provided by  
 298 law, an association may not condition or prohibit the rental to a tenant of a lot by a lot owner or make  
 299 an assessment or impose a charge except as provided in § 55-509.3.

300 B. Except as expressly authorized in this chapter or in the declaration, no association shall:

301 1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or  
 302 impose a charge except as provided in § 55-509.3;

303 2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 as a  
 304 condition of approval of such a rental during the term of any lease;

305 ~~2.~~ 3. Charge an annual or monthly rental fee or any other fee not expressly authorized in  
 306 § 55-509.3;

307 4. Require the lot owner to use a lease or an addendum to the lease prepared by the association; ~~or~~

308 ~~3.~~ 5. Charge a security any deposit from the lot owner or the tenant of the lot owner; or

309 6. Have the authority to evict a tenant of any lot owner or to require any lot owner to execute a  
 310 power of attorney authorizing the association to so evict. However, if the lot owner designates a person  
 311 licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative with respect  
 312 to any lease, the association shall recognize such representation without a formal power of attorney,  
 313 provided that the association is given a written authorization signed by the lot owner designating such  
 314 representative. Notwithstanding the foregoing, the requirements of § 55-515 and the declaration shall be  
 315 satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

316 ~~C.~~ B. The association may require the lot owner to provide the association with a copy of any (i)  
 317 lease with a tenant or (ii) association document completed by the lot owner or representative that  
 318 discloses the names and contact information of the tenant tenants and authorized occupants under such  
 319 lease and any authorized agent of the lot owner, and vehicle information for such tenants or authorized  
 320 occupants. The association may require the lot owner to provide the association with the tenant's  
 321 acknowledgement of and consent to any rules and regulations of the association.

322 C. The provisions of this section shall not apply to lots owned by the association.

323 **§ 55-509.4. Contract disclosure statement; right of cancellation.**

324 A. Subject to the provisions of subsection A of § 55-509.10, a person an owner selling a lot shall  
 325 disclose in the contract that (i) the lot is located within a development that is subject to the Virginia  
 326 Property Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the  
 327 property owners' association an association disclosure packet and provide it to the purchaser; (iii) the  
 328 purchaser may cancel the contract within three days after receiving the association disclosure packet or  
 329 being notified that the association disclosure packet will not be available; (iv) if the purchaser has  
 330 received the association disclosure packet, the purchaser has a right to request an update of such  
 331 disclosure packet in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as  
 332 appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the  
 333 contract are waived conclusively if not exercised before settlement.

334 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if  
 335 (a) a current annual report has not been filed by the association with either the State Corporation  
 336 Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to  
 337 § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and  
 338 no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c)  
 339 written notice has been provided by the association that a packet is not available.

340 B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole  
 341 remedy is to cancel the contract prior to settlement.

342 C. The information contained in the association disclosure packet shall be current as of a date  
 343 specified on the association disclosure packet prepared in accordance with this section; however, a  
 344 disclosure packet update or financial update may be requested in accordance with subsection G of  
 345 § 55-509.6 or subsection C of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i)  
 346 within three days after the date of the contract, if on or before the date that the purchaser signs the  
 347 contract, the purchaser receives the association disclosure packet or is notified that the association  
 348 disclosure packet will not be available; (ii) within three days after receiving the association disclosure  
 349 packet if the association disclosure packet or notice that the association disclosure packet will not be  
 350 available is hand delivered, delivered by electronic means, or delivered by a commercial overnight  
 351 delivery service or the United Parcel States Postal Service, and a receipt obtained; or (iii) within six  
 352 days after the postmark date if the association disclosure packet or notice that the association disclosure  
 353 packet will not be available is sent to the purchaser by United States mail. The purchaser may also  
 354 cancel the contract at any time prior to settlement if the purchaser has not been notified that the  
 355 association disclosure packet will not be available and the association disclosure packet is not delivered  
 356 to the purchaser.

357 Notice of cancellation shall be provided to the lot owner or his agent by one of the following  
 358 methods:

359 1. Hand delivery;

360 2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which  
 361 may be either a United States postal certificate of mailing or a certificate of service prepared by the

362 sender confirming such mailing;

363 3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may  
364 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate  
365 of service prepared by the sender confirming the electronic delivery; or

366 4. Overnight delivery using a commercial service or the United States Postal Service.

367 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of  
368 cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be  
369 returned promptly to the purchaser.

370 D. Whenever any contract is canceled based on a failure to comply with subsection A or C or  
371 pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the  
372 cancellation, unless the parties to the contract specify in writing a shorter period.

373 E. Any rights of the purchaser to cancel the contract provided by this chapter are waived  
374 conclusively if not exercised prior to settlement.

375 F. Except as expressly provided in this chapter, the provisions of this section and § 55-509.5 may not  
376 be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

377 G. For purposes of this chapter:

378 *"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized*  
379 *agent by one of the methods specified in this section.*

380 *"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real*  
381 *estate contract for purchase and sale of residential real property or other writing designating such*  
382 *agent.*

383 *"Receives, received, or receiving" the disclosure packet means that the purchaser or purchaser's*  
384 *authorized agent has received the disclosure packet by one of the methods specified in this section.*

385 *"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract*  
386 *for purchase and sale of residential real property or other writing designating such agent.*

387 H. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the  
388 purchaser's authorized agent shall require delivery to such agent and not to a person other than such  
389 agent. Delivery of the disclosure packet may be made by the lot owner or the lot owner's authorized  
390 agent.

391 I. If the lot is governed by more than one association, the purchaser's right of cancellation may be  
392 exercised within the required time frames following delivery of the last disclosure packet or resale  
393 certificate.

394 **§ 55-509.5. Contents of association disclosure packet; delivery of packet.**

395 A. The association shall deliver, within 14 days after receipt of a written request and instructions by  
396 a seller or his ~~the~~ seller's authorized agent, an association disclosure packet as directed in the written  
397 request. The information contained in the association disclosure packet shall be current as of a date  
398 specified on the association disclosure packet. If hand or electronically delivered, the written request is  
399 deemed received on the date of delivery. If sent by United States mail, the request is deemed received  
400 six days after the postmark date. An association disclosure packet shall contain the following:

401 1. The name of the association and, if incorporated, the state in which the association is incorporated  
402 and the name and address of its registered agent in Virginia;

403 2. A statement of any expenditure of funds approved by the association or the board of directors that  
404 shall require an assessment in addition to the regular assessment during the current year or the  
405 immediately succeeding fiscal year;

406 3. A statement, including the amount of all assessments and any other mandatory fees or charges  
407 currently imposed by the association, together with any post-closing fee charged by the common interest  
408 community manager, if any, and associated with the purchase, disposition, and maintenance of the lot  
409 and to the right of use of common areas, and the status of the account;

410 4. A statement of whether there is any other entity or facility to which the lot owner may be liable  
411 for fees or other charges;

412 5. The current reserve study report or summary thereof, a statement of the status and amount of any  
413 reserve or replacement fund, and any portion of the fund allocated by the board of directors for a  
414 specified project;

415 6. A copy of the association's current budget or a summary thereof prepared by the association, and a  
416 copy of its statement of income and expenses or statement of its financial position (balance sheet) for  
417 the last fiscal year for which such statement is available, including a statement of the balance due of any  
418 outstanding loans of the association;

419 7. A statement of the nature and status of any pending suit or unpaid judgment to which the  
420 association is a party and that either could or would have a material impact on the association or its  
421 members or that relates to the lot being purchased;

422 8. A statement setting forth what insurance coverage is provided for all lot owners by the association,

423 including the fidelity bond maintained by the association, and what additional insurance would normally  
424 be secured by each individual lot owner;

425 9. A statement that any improvement or alteration made to the lot, or uses made of the lot or  
426 common area assigned thereto are or are not in violation of the declaration, bylaws, rules and  
427 regulations, architectural guidelines and articles of incorporation, if any, of the association;

428 10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to  
429 place a sign on the owner's lot advertising the lot for sale;

430 11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to  
431 display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size,  
432 place, and manner of placement or display of such flag and the installation of any flagpole or similar  
433 structure necessary to display such flag;

434 12. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to  
435 install or use solar energy collection devices on the owner's property;

436 13. A copy of the current declaration, the association's articles of incorporation and bylaws, and any  
437 rules and regulations or architectural guidelines adopted by the association;

438 14. A copy of any approved minutes of the board of directors and association meetings for the six  
439 calendar months preceding the request for the disclosure packet;

440 15. A copy of the notice given to the lot owner by the association of any current or pending rule or  
441 architectural violation;

442 16. A copy of the fully completed one-page cover sheet developed by the Common Interest  
443 Community Board pursuant to § 54.1-2350;

444 17. Certification that the association has filed with the Common Interest Community Board the  
445 annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the  
446 Common Interest Community Board, and the expiration date of such filing; and

447 18. A statement indicating any known project approvals currently in effect issued by secondary  
448 mortgage market agencies.

449 B. Failure to receive copies of an association disclosure packet shall not excuse any failure to  
450 comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

451 C. The disclosure packet shall be delivered in accordance with the written request and instructions of  
452 the seller or ~~his~~ *the seller's* authorized agent, including whether the disclosure packet shall be delivered  
453 electronically or in hard copy and shall specify the complete contact information for the parties to whom  
454 the disclosure packet shall be delivered. The disclosure packet required by this section, shall not, in and  
455 of itself, be deemed a security within the meaning of § 13.1-501.

456 D. The seller or ~~his~~ *the seller's* authorized agent may request that the disclosure packet be provided  
457 in hard copy or in electronic form. An association or common interest community manager may provide  
458 the disclosure packet electronically; however, the seller or ~~his~~ *the seller's* authorized agent shall have the  
459 right to request that the association disclosure packet be provided in hard copy. The seller or ~~his~~ *the*  
460 *seller's* authorized agent shall continue to have the right to request a hard copy of the disclosure packet  
461 in person at the principal place of business of the association. If the seller or ~~his~~ *the seller's* authorized  
462 agent requests that the disclosure packet be provided in electronic format, neither the association nor its  
463 common interest community manager may require the seller or ~~his~~ *the seller's* authorized agent to pay  
464 any fees to use the provider's electronic network or system. The disclosure packet shall not be delivered  
465 in hard copy if the ~~requestor~~ *requester* has requested delivery of such disclosure packet electronically. If  
466 the disclosure packet is provided electronically by a website link, the preparer shall not cause the  
467 website link to expire within the subsequent 90-day period. The preparer shall not charge another fee  
468 during the subsequent 12-month period, except that the preparer may charge an update fee of \$50 *for a*  
469 *financial update or for an inspection* as provided in § 55-509.6 ~~after the expiration of the 90-day period~~  
470 ~~from the date of issuance of such packet.~~ If the seller or his authorized agent asks that the disclosure  
471 packet be provided in electronic format, the seller or his authorized agent may designate no more than  
472 two additional recipients to receive the disclosure packet in electronic format at no additional charge. *If*  
473 *the seller or the seller's authorized agent asks that the disclosure packet be provided in electronic*  
474 *format, the seller or the seller's authorized agent may request that an electronic copy be provided to*  
475 *each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the*  
476 *purchaser's authorized agent, and not more than one other person designated by the requester. If so*  
477 *requested, the property owners' association or its common interest community manager may require the*  
478 *seller or the seller's authorized agent to pay the fee specified in § 55-509.6. Regardless of whether the*  
479 *disclosure packet is delivered in paper form or electronically, the preparer of the disclosure packet shall*  
480 *provide such disclosure packet directly to the persons designated by the requester to the addresses or, if*  
481 *applicable, the email addresses provided by the requester.*

482 **§ 55-509.6. Fees for disclosure packet; professionally managed associations.**

483 A. A professionally managed association or its common interest community manager may charge



484 certain fees as authorized by this section for the inspection of the property, the preparation and issuance  
 485 of the disclosure packet required by § 55-509.5, and for such other services as set out in this section.  
 486 The seller or ~~his~~ *the seller's* authorized agent shall specify in writing whether the disclosure packet shall  
 487 be delivered electronically or in hard copy, at the option of the seller or ~~his~~ *the seller's* authorized agent,  
 488 and shall specify the complete contact information for the parties to whom the disclosure packet shall be  
 489 delivered.

490 B. A reasonable fee may be charged by the preparer as follows for:

491 1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and  
 492 as required to prepare the association disclosure packet, a fee not to exceed \$100;

493 2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150  
 494 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an  
 495 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,  
 496 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the  
 497 ~~requestor~~ *requester*. The preparer of the disclosure packet shall provide the disclosure packet directly to  
 498 the designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure  
 499 packet;

500 3. At the option of the seller or ~~his~~ *the seller's* authorized agent, with the consent of the association  
 501 or the common interest community manager, expediting the inspection, preparation and delivery of the  
 502 disclosure packet, an additional expedite fee not to exceed \$50;

503 4. At the option of the seller or ~~his~~ *the seller's* authorized agent, an additional hard copy of the  
 504 disclosure packet, a fee not to exceed \$25 per hard copy;

505 5. At the option of the seller or ~~his~~ *the seller's* authorized agent, a fee not to exceed an amount equal  
 506 to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight  
 507 delivery of the association disclosure packet; and

508 6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of  
 509 establishing the purchaser as the owner of the property in the records of the association, a fee not to  
 510 exceed \$50.

511 Except as otherwise provided in subsection E, neither the association nor its common interest  
 512 community manager shall require cash, check, certified funds or credit card payments at the time the  
 513 request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the  
 514 disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the  
 515 lot and collectible as any other assessment in accordance with the provisions of the declaration and  
 516 § 55-516, if not paid at settlement or within ~~45~~ *60* days of the delivery of the disclosure packet,  
 517 whichever occurs first.

518 For purposes of this section, an expedite fee shall only be charged if the inspection and preparation  
 519 of delivery of the disclosure packet are completed within five business days of the request for a  
 520 disclosure packet.

521 C. No fees other than those specified in this section, and as limited by this section, shall be charged  
 522 by the association or its common interest community manager for compliance with the duties and  
 523 responsibilities of the association under this chapter. No additional fee shall be charged for access to the  
 524 association's or common interest community manager's website. The association or its common interest  
 525 community manager shall publish and make available in paper or electronic format, or both, a schedule  
 526 of the applicable fees so the seller or ~~his~~ *the seller's* authorized agent will know such fees at the time of  
 527 requesting the packet.

528 D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale  
 529 of the lot and shall be due and payable out of the settlement proceeds in accordance with this section.  
 530 The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. The  
 531 seller shall be responsible for all costs associated with the preparation and delivery of the association  
 532 disclosure packet, except for the costs of any disclosure packet update or financial update, which costs  
 533 shall be the responsibility of the ~~requestor~~ *requester*, payable at settlement. Neither the association nor  
 534 its common interest community manager shall require cash, check, certified funds, or credit card  
 535 payments at the time of the request is made for the association disclosure packet.

536 E. If settlement does not occur within ~~45~~ *60* days of the delivery of the disclosure packet, or funds  
 537 are not collected at settlement and disbursed to the association or the common interest community  
 538 manager, all fees, including those costs that would have otherwise been the responsibility of the  
 539 purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure  
 540 packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against  
 541 the lot and collectible as any other assessment in accordance with the provisions of the declaration and  
 542 § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card  
 543 payment is an option offered by the association. The association shall pay the common interest  
 544 community manager the amount due from the lot owner within 30 days after invoice.

545 F. The maximum allowable fees charged in accordance with this section shall adjust every five years,  
546 as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the  
547 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published  
548 by the Bureau of Labor Statistics of the U.S. Department of Labor.

549 G. If an association disclosure packet has been issued for a lot within the preceding 12-month period,  
550 a person specified in the written instructions of the seller or ~~his~~ *the seller's* authorized agent, including  
551 the seller or ~~his~~ *the seller's* authorized agent, or the purchaser or his authorized agent may request a  
552 disclosure packet update. The ~~requestor~~ *requester* shall specify whether the disclosure packet update  
553 shall be delivered electronically or in hard copy, and shall specify the complete contact information of  
554 the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within  
555 10 days of the written request.

556 H. The settlement agent may request a financial update. The ~~requestor~~ *requester* shall specify  
557 whether the financial update shall be delivered electronically or in hard copy, and shall specify the  
558 complete contact information of the parties to whom the update shall be delivered. The financial update  
559 shall be delivered within three business days of the written request.

560 I. A reasonable fee for the disclosure packet update or financial update may be charged by the  
561 preparer not to exceed \$50. At the option of the purchaser or ~~his~~ *the purchaser's* authorized agent, the  
562 ~~requestor~~ *requester* may request that the association or the common interest community manager perform  
563 an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration,  
564 for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time  
565 settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay  
566 such costs of the seller at settlement. Neither the association nor its common interest community  
567 manager, if any, shall require cash, check, certified funds, or credit card payments at the time the  
568 request is made for the disclosure packet update. The ~~requestor~~ *requester* may request that the specified  
569 update be provided in hard copy or in electronic form.

570 J. No association or common interest community manager may require the ~~requestor~~ *requester* to  
571 request the specified update electronically. The seller or ~~his~~ *the seller's* authorized agent shall continue  
572 to have the right to request a hard copy of the specified update in person at the principal place of  
573 business of the association. If the ~~requestor~~ *requester* asks that the specified update be provided in  
574 electronic format, neither the association nor its common interest community manager may require the  
575 requester to pay any fees to use the provider's electronic network or system. A copy of the specified  
576 update shall be provided to the seller or ~~his~~ *the seller's* authorized agent.

577 K. When an association disclosure packet has been delivered as required by § 55-509.5, the  
578 association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the  
579 assessment account and the status of the lot with respect to any violation of the declaration, bylaws,  
580 rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as  
581 of the date of the statement unless the purchaser had actual knowledge that the contents of the  
582 disclosure packet were in error.

583 L. If the association or its common interest community manager has been requested in writing to  
584 furnish the association disclosure packet required by § 55-509.5, failure to provide the association  
585 disclosure packet substantially in the form provided in this section shall be deemed a waiver of any  
586 claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or  
587 architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer  
588 of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages  
589 sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated  
590 to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association  
591 as to all matters arising after the date of the settlement of the sale.