

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 374

An Act to amend and reenact § 55-515.1 of the Code of Virginia, relating to the Property Owners' Association Act; amendment of declaration.

[H 1554]

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 55-515.1 of the Code of Virginia is amended and reenacted as follows:

§ 55-515.1. Amendment to declaration and bylaws; consent of mortgagee.

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise. If the mortgagee has not supplied an address to the association, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect a lot as collateral or the right of the mortgagee to foreclose on a lot as collateral.

C. Where the declaration is silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the declaration does not specifically affect mortgagee rights.

D. ~~*Except as otherwise provided in the declaration, a declaration may be amended by a two-thirds vote of the owners. This subsection may be applied to an association subject to a declaration recorded prior to July 1, 1999, if the declaration is silent on how it may be amended or upon the amendment of that declaration in accordance with its requirements.*~~

E. An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective.

F. Agreement of the required majority of lot owners to any amendment of the declaration *adopted pursuant to subsection D* shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the association or by such other officer or officers as the declaration may specify, that the requisite majority of the lot owners signed the amendment or ratifications thereof.

G. *Subsections D and F shall not be construed to affect the validity of any amendment recorded prior to July 1, 2017.*

2. That the provisions of subsections D and F, as amended by this act, shall not apply to any amendment of a declaration adopted prior to July 1, 2017, which was otherwise adopted in compliance with the terms of the declaration.