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HOUSE BILL NO. 2045**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on January 26, 2017)

(Patron Prior to Substitute—Delegate Miller)

A BILL to amend and reenact §§ 54.1-2349, 55-509.4, and 55-509.6 of the Code of Virginia, relating to the Property Owners' Association Act; designation of authorized representative by seller; association disclosure packet.

Be it enacted by the General Assembly of Virginia:**1. That §§ 54.1-2349, 55-509.4, and 55-509.6 of the Code of Virginia are amended and reenacted as follows:****§ 54.1-2349. Powers and duties of the Board.**

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) \$1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding year. For the purposes of clause (ii), no minimum payment shall be less than \$10. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter;

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter; and

8. Develop and publish best practices for the content of declarations consistent with the requirements

60 of the Property Owners' Association Act (§ 55-508 et seq.).

61 B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the
62 promulgation of regulations to carry out the requirements thereof.

63 2. The Board shall also be responsible for the enforcement of this chapter, provided that the Real
64 Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real
65 estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter
66 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

67 3. For purposes of enforcement of this chapter or Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et
68 seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, any requirement for the conduct of a
69 hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to
70 § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

71 C. The Board is authorized to obtain criminal history record information from any state or federal
72 law-enforcement agency relating to an applicant for licensure or certification. Any information so
73 obtained is for the exclusive use of the Board and shall not be released to any other person or agency
74 except in furtherance of the investigation of the applicant or with the authorization of the applicant or
75 upon court order.

76 *D. Notwithstanding the provisions of subsection E of § 55-530, the Board may receive a complaint*
77 *directly from any person aggrieved by an association's failure to deliver a resale certificate or*
78 *disclosure packet within the time period required under § 55-79.97, 55-79.97:1, 55-484, 55-509.5,*
79 *55-509.6, or 55-509.7.*

80 **§ 55-509.4. Contract disclosure statement; right of cancellation; use of for sale sign in**
81 **connection with resale; designation of authorized representative.**

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

92 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if
93 (a) a current annual report has not been filed by the association with either the State Corporation
94 Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to
95 § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and
96 no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c)
97 written notice has been provided by the association that a packet is not available.

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

100 C. The information contained in the association disclosure packet shall be current as of a date
101 specified on the association disclosure packet prepared in accordance with this section; however, a
102 disclosure packet update or financial update may be requested in accordance with subsection G of
103 § 55-509.6 or subsection C of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i)
104 within three days after the date of the contract, if on or before the date that the purchaser signs the
105 contract, the purchaser receives the association disclosure packet or is notified that the association
106 disclosure packet will not be available; (ii) within three days after receiving the association disclosure
107 packet if the association disclosure packet or notice that the association disclosure packet will not be
108 available is hand delivered, delivered by electronic means, or delivered by a commercial overnight
109 delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after
110 the postmark date if the association disclosure packet or notice that the association disclosure packet will
111 not be available is sent to the purchaser by United States mail. The purchaser may also cancel the
112 contract at any time prior to settlement if the purchaser has not been notified that the association
113 disclosure packet will not be available and the association disclosure packet is not delivered to the
114 purchaser.

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

117 1. Hand delivery;

118 2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which
119 may be either a United States postal certificate of mailing or a certificate of service prepared by the
120 sender confirming such mailing;

121 3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may

be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

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

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

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

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

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

G. For purposes of this chapter:

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

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

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

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

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

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

J. Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall:

1. Require the use of any for sale sign that is (i) an association sign or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. An association may, however, prohibit the placement of signs in the common area and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed; or

2. Require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

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

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55-509.5, and for such other services as set out in this section. The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

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

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

2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an

183 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,
184 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the
185 requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the
186 designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure
187 packet;

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

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

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

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

199 Except as otherwise provided in subsection E, neither the association nor its common interest
200 community manager shall require cash, check, certified funds or credit card payments at the time the
201 request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the
202 disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the
203 lot and collectible as any other assessment in accordance with the provisions of the declaration and
204 § 55-516, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever
205 occurs first.

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

209 C. No fees other than those specified in this section, and as limited by this section, shall be charged
210 by the association or its common interest community manager for compliance with the duties and
211 responsibilities of the association under this chapter. No additional fee shall be charged for access to the
212 association's or common interest community manager's website. The association or its common interest
213 community manager shall publish and make available in paper or electronic format, or both, a schedule
214 of the applicable fees so the seller or the seller's authorized agent will know such fees at the time of
215 requesting the packet.

216 D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale
217 of the lot and shall be due and payable out of the settlement proceeds in accordance with this section.
218 The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. The
219 seller shall be responsible for all costs associated with the preparation and delivery of the association
220 disclosure packet, except for the costs of any disclosure packet update or financial update, which costs
221 shall be the responsibility of the requester, payable at settlement. Neither the association nor its common
222 interest community manager shall require cash, check, certified funds, or credit card payments at the
223 time of the request is made for the association disclosure packet.

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

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

237 G. If an association disclosure packet has been issued for a lot within the preceding 12-month period,
238 a person specified in the written instructions of the seller or the seller's authorized agent, including the
239 seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure
240 packet update. The requester shall specify whether the disclosure packet update shall be delivered
241 electronically or in hard copy, and shall specify the complete contact information of the parties to whom
242 the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the
243 written request.

244 H. The settlement agent may request a financial update. The requester shall specify whether the

financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

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

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

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

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

M. *The Common Interest Community Board may assess a monetary penalty for failure to deliver the association disclosure packet within 14 days against any (i) property owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.*