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SENATE BILL NO. 1231

Offered January 11, 2017

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A BILL to amend and reenact §§ 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.

Patrons—Stanley, Lewis and Mason

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-509.4 and 55-509.6 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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

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

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

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59 cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be
60 returned promptly to the purchaser.

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

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

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

68 G. For purposes of this chapter:

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

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

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

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

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

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

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

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

96 *2. Require any lot owner to execute a formal power of attorney if the lot owner designates a person*
97 *licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative, and the*
98 *association shall recognize such representation without a formal power of attorney, provided that the*
99 *association is given a written authorization signed by the lot owner designating such representative.*
100 *Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act*
101 *(§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be*
102 *satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.*

103 **§ 55-509.6. Fees for disclosure packet; professionally managed associations.**

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

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

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

114 2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150
115 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an
116 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,
117 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the
118 requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the
119 designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure
120 packet;

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

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

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

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

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

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

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

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

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

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

G. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester shall specify whether the disclosure packet 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 disclosure packet update shall be delivered within 10 days of the written request.

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

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

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

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

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

214 M. *The Common Interest Community Board may assess a monetary penalty for failure to deliver the*
215 *association disclosure packet within 14 days against any (i) property owners' association pursuant to*
216 *§ 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations*
217 *promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as*
218 *applicable.*