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SENATE BILL NO. 1255

Offered January 11, 2017

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A *BILL to amend and reenact §§ 55-79.97 and 55-79.97:1 of the Code of Virginia, relating to the Condominium Act; resale by purchaser; designation of authorized representative.*

Patrons—DeSteph and Mason; Delegate: Knight

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-79.97 and 57-79.97:1 of the Code of Virginia are amended as follows:

§ 55-79.97. Resale by purchaser; resale certificate; use of for sale sign in connection with resale; designation of authorized representative.

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 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 resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate or is notified that the resale certificate will not be available on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate or notice that the resale certificate 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 resale certificate or notice that the resale certificate 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 resale certificate will not be available and the resale certificate is not delivered to the purchaser.*

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

- a. Hand delivery;
- b. 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;
- c. 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
- d. 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 unit owner shall cause any deposit to be returned promptly to the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized

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59 and, if applicable, an appropriate statement pursuant to § 55-79.85;

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

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

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

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

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

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

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

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

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

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

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

91 13. A copy of any approved minutes of the executive organ and unit owners' association meetings for
92 the six calendar months preceding the request for the resale certificate;

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

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

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

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

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

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

106 The resale certificate shall be delivered in accordance with the written request and instructions of the
107 seller or the seller's authorized agent, including whether the resale certificate shall be delivered
108 electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall
109 specify the complete contact information for the parties to whom the resale certificate shall be delivered.
110 The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate
111 shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

112 D. The seller or the seller's authorized agent may request that the resale certificate be provided in
113 hard copy or in electronic form. A unit owners' association or common interest community manager may
114 provide the resale certificate electronically; however, the seller or the seller's authorized agent shall have
115 the right to request that the resale certificate be provided in hard copy. The seller or the seller's
116 authorized agent shall continue to have the right to request a hard copy of the resale certificate in person
117 at the principal place of business of the unit owners' association. If the seller or the seller's authorized
118 agent requests that the resale certificate be provided in electronic format, neither the unit owners'
119 association nor its common interest community manager may require the seller or the seller's authorized
120 agent to pay any fees to use the provider's electronic network or system. The resale certificate shall not

be delivered in hard copy if the requester has requested delivery of such resale certificate electronically. If the resale certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55-79.97:1. If the seller or the seller's authorized agent asks that the resale certificate be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the unit owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55-79.97:1. Regardless of whether the resale certificate is delivered in paper form or electronically, the preparer of the resale certificate shall provide such resale certificate directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

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

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

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

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

H. For purposes of this chapter:

"Delivery" means that the resale certificate 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 resale certificate means that the purchaser or purchaser's authorized agent has received the resale certificate 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.

I. 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 resale certificate may be made by the unit owner or the seller's authorized agent.

J. If the unit 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 resale certificate or disclosure packet.

K. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements 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 Virginia 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 unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. If a resale certificate has been issued 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 the purchaser's authorized agent, may request a resale certificate update. The requester shall specify whether the resale certificate 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 resale certificate 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 resale certificate 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 unit owners' association or the common interest community manager perform an additional inspection of the unit, 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 at settlement. Neither the unit owners' 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 resale certificate update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' 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 unit owners' association. If the requester asks that the specified update be provided in electronic format, neither the unit owners' 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 a resale certificate has been delivered as required by § 55-79.97, the unit owners' 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 unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate 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 unit. The preparer of the resale certificate 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 condominium instruments, rules and regulations, and architectural guidelines of the unit owners' 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 resale certificate within 14 days against any (i) unit 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.*