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HOUSE BILL NO. 923

House Amendments in [] — February 2, 2018

A BILL to amend and reenact §§ 54.1-2350, 55-79.97, and 55-509.5 of the Code of Virginia, relating to the Common Interest Community Board; information on covenants; association disclosure packets and resale certificates.

Patron Prior to Engrossment—Delegate Bulova

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2350, 55-79.97, and 55-509.5 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2350. Annual report; form to accompany resale certificates and disclosure packets.

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1; and

3. Develop and disseminate a one-page form to accompany resale certificates required pursuant to § 55-79.97 and association disclosure packets required pursuant to § 55-509.5, which form shall summarize the unique characteristics of property owners' associations common interest communities generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including that may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest community. The form shall include information on the following, [as which may or may not be] applicable [to a particular common interest community] : (i) the obligation on the part of a lot owner to pay regular annual or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments; (iii) the purposes for which such assessments, if any, may be used; (iv) the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living; (v) limitations on an owner's ability to rent his lot or unit; (vi) limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community; (vii) limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) [provisions related to] the [period or length of] declarant control [period] ; and (xi) that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law. The form shall also provide that (a) the purchaser remains responsible for his own examination of the materials that constitute the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b) the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies between the form and the resale certificate or disclosure packet.

§ 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

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59 C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not
60 available.

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

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

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

77 a. Hand delivery;

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

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

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

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

88 A resale certificate shall include the following:

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

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

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

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

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

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

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

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

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

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

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

120 12. A copy of the notice given to the unit owner by the unit owners' association of any current or

121 pending rule or architectural violation;

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

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

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

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

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

133 18. A statement indicating any known project approvals currently in effect issued by secondary
134 mortgage market agencies; *and*

135 19. *A copy of the form developed by the Common Interest Community Board pursuant to*
136 *§ 54.1-2350.*

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

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

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

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

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

172 1. A disposition of a unit by gift;

173 2. A disposition of a unit pursuant to court order if the court so directs;

174 3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or

175 4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part
176 of the auction package for prospective purchasers prior to the auction.

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

180 H. For purposes of this chapter:

181 "Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized

182 agent by one of the methods specified in this section.

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

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

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

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

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

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

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

207 2. Require any unit owner to execute a formal power of attorney if the unit owner designates a
208 person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and
209 the unit owners' association shall recognize such representation without a formal power of attorney,
210 provided that the unit owners' association is given a written authorization signed by the unit owner
211 designating such representative. Notwithstanding the foregoing, the requirements of § 55-79.77 and the
212 condominium instruments shall be satisfied before any such representative may exercise a vote on behalf
213 of a unit owner as a proxy.

214 **§ 55-509.5. Contents of association disclosure packet; delivery of packet.**

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

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

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

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

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

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

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

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

242 8. A statement setting forth what insurance coverage is provided for all lot owners by the association,
243 including the fidelity bond maintained by the association, and what additional insurance would normally

244 be secured by each individual lot owner;

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

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

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

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

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

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

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

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

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

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

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

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

276 D. The seller or the seller's authorized agent may request that the disclosure packet be provided in
277 hard copy or in electronic form. An association or common interest community manager may provide
278 the disclosure packet electronically; however, the seller or the seller's authorized agent shall have the
279 right to request that the association disclosure packet be provided in hard copy. The seller or the seller's
280 authorized agent shall continue to have the right to request a hard copy of the disclosure packet in
281 person at the principal place of business of the association. If the seller or the seller's authorized agent
282 requests that the disclosure packet be provided in electronic format, neither the association nor its
283 common interest community manager may require the seller or the seller's authorized agent to pay any
284 fees to use the provider's electronic network or system. The disclosure packet shall not be delivered in
285 hard copy if the requester has requested delivery of such disclosure packet electronically. If the
286 disclosure packet is provided electronically by a website link, the preparer shall not cause the website
287 link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the
288 subsequent 12-month period, except that the preparer may charge an update fee for a financial update or
289 for an inspection as provided in § 55-509.6. If the seller or the seller's authorized agent asks that the
290 disclosure packet be provided in electronic format, the seller or the seller's authorized agent may request
291 that an electronic copy be provided to each of the following named in the request: the seller, the seller's
292 authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person
293 designated by the requester. If so requested, the property owners' association or its common interest
294 community manager may require the seller or the seller's authorized agent to pay the fee specified in
295 § 55-509.6. Regardless of whether the disclosure packet is delivered in paper form or electronically, the
296 preparer of the disclosure packet shall provide such disclosure packet directly to the persons designated
297 by the requester to the addresses or, if applicable, the email addresses provided by the requester.