

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act 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.

[H 923]

Approved

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, 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) the period or length of declarant control; and ~~(v)~~ (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 C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

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

59 C. The information contained in the resale certificate shall be current as of a date specified on the
60 resale certificate. A resale certificate update or a financial update may be requested as provided in
61 § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date
62 of the contract, if the purchaser receives the resale certificate or is notified that the resale certificate will
63 not be available on or before the date that the purchaser signs the contract; (ii) within three days after
64 receiving the resale certificate if the resale certificate or notice that the resale certificate will not be
65 available is hand delivered, delivered by electronic means, or delivered by a commercial overnight
66 delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after
67 the postmark date if the resale certificate or notice that the resale certificate will not be available is sent
68 to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to
69 settlement if the purchaser has not been notified that the resale certificate will not be available and the
70 resale certificate is not delivered to the purchaser.

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

73 a. Hand delivery;

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

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

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

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

84 A resale certificate shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

131 19. *A copy of the fully completed form developed by the Common Interest Community Board*
132 *pursuant to § 54.1-2350.*

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

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

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

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

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

168 1. A disposition of a unit by gift;

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

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

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

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

176 H. For purposes of this chapter:

177 "Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized
178 agent by one of the methods specified in this section.

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

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

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

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

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

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

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

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

210 **§ 55-509.5. Contents of association disclosure packet; delivery of packet.**

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

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

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

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

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

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

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

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

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

240 be secured by each individual lot owner;

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

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

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

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

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

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

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

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

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

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

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

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

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