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HOUSE BILL NO. 2019

Offered January 9, 2019

Prefiled January 7, 2019

A *BILL to amend and reenact §§ 55-509.5, 55-509.10, and 55-519 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-519.5, relating to residential property; required disclosures; stormwater management facilities.*

Patrons—Murphy, Convirs-Fowler, Cole and Turpin

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-509.5, 55-509.10, and 55-519 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-519.5 as follows:

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

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

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

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

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

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

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

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

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

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

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

10. *A statement disclosing the presence of any stormwater management facilities that the association has the obligation to repair, replace, or restore and any maintenance agreement for such facilities;*

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

~~12.~~ 12. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

~~13.~~ 13. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to install or use solar energy collection devices on the owner's property;

~~14.~~ 14. A copy of the current declaration, the association's articles of incorporation and bylaws, and

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59 any rules and regulations or architectural guidelines adopted by the association;
60 ~~14- 15.~~ A copy of any approved minutes of the board of directors and association meetings for the
61 six calendar months preceding the request for the disclosure packet;
62 ~~15- 16.~~ A copy of the notice given to the lot owner by the association of any current or pending rule
63 or architectural violation;
64 ~~16- 17.~~ A copy of the fully completed form developed by the Common Interest Community Board
65 pursuant to § 54.1-2350;
66 ~~17- 18.~~ Certification that the association has filed with the Common Interest Community Board the
67 annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the
68 Common Interest Community Board, and the expiration date of such filing; and
69 ~~18- 19.~~ A statement indicating any known project approvals currently in effect issued by secondary
70 mortgage market agencies.
71 B. Failure to receive copies of an association disclosure packet shall not excuse any failure to
72 comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.
73 C. The disclosure packet shall be delivered in accordance with the written request and instructions of
74 the seller or the seller's authorized agent, including whether the disclosure packet shall be delivered
75 electronically or in hard copy and shall specify the complete contact information for the parties to whom
76 the disclosure packet shall be delivered. The disclosure packet required by this section, shall not, in and
77 of itself, be deemed a security within the meaning of § 13.1-501.
78 D. The seller or the seller's authorized agent may request that the disclosure packet be provided in
79 hard copy or in electronic form. An association or common interest community manager may provide
80 the disclosure packet electronically; however, the seller or the seller's authorized agent shall have the
81 right to request that the association disclosure packet be provided in hard copy. The seller or the seller's
82 authorized agent shall continue to have the right to request a hard copy of the disclosure packet in
83 person at the principal place of business of the association. If the seller or the seller's authorized agent
84 requests that the disclosure packet be provided in electronic format, neither the association nor its
85 common interest community manager may require the seller or the seller's authorized agent to pay any
86 fees to use the provider's electronic network or system. The disclosure packet shall not be delivered in
87 hard copy if the requester has requested delivery of such disclosure packet electronically. If the
88 disclosure packet is provided electronically by a website link, the preparer shall not cause the website
89 link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the
90 subsequent 12-month period, except that the preparer may charge an update fee for a financial update or
91 for an inspection as provided in § 55-509.6. If the seller or the seller's authorized agent asks that the
92 disclosure packet be provided in electronic format, the seller or the seller's authorized agent may request
93 that an electronic copy be provided to each of the following named in the request: the seller, the seller's
94 authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person
95 designated by the requester. If so requested, the property owners' association or its common interest
96 community manager may require the seller or the seller's authorized agent to pay the fee specified in
97 § 55-509.6. Regardless of whether the disclosure packet is delivered in paper form or electronically, the
98 preparer of the disclosure packet shall provide such disclosure packet directly to the persons designated
99 by the requester to the addresses or, if applicable, the email addresses provided by the requester.
100 **§ 55-509.10. Exceptions to disclosure requirements.**
101 A. The contract disclosures required by § 55-509.4 and the association disclosure packet required by
102 § 55-509.5 shall not be provided in the case of:
103 1. A disposition of a lot by gift;
104 2. A disposition of a lot pursuant to court order if the court so directs;
105 3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
106 4. A disposition of a lot by a sale at an auction, where the association disclosure packet was made
107 available as part of an auction package for prospective purchasers prior to the auction sale; or
108 5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or
109 for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by
110 such person or entity. If such disclosures are not requested, a statement in the contract of sale that the
111 purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the
112 seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the
113 declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all
114 matters.
115 B. In any transaction in which an association disclosure packet is required and a trustee acts as the
116 seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the
117 association and provide the packet to the purchaser.
118 C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet
119 required by § 55-509.5 need not include the information referenced in subdivisions A 2, A 3, A 5 nor A
120 9 of § 55-509.5, and it shall include the information referenced in subdivision A ~~17 18~~ of § 55-509.5

only if the association has filed an annual report prior to the date of such disclosure packet.

§ 55-519. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of (i) any local ordinance creating such district, (ii) any official map adopted by the locality depicting historic districts, and (iii) any materials available from the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local historic district and (b) the necessity of any local review board or governing body approvals prior to doing any work on a property located in a local historic district, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

5. The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and that purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

6. The owner makes no representations with respect to whether the property is within a dam break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones;

7. The owner makes no representations with respect to the presence of any stormwater detention facilities located on the property, or any maintenance agreement for such facilities, and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any stormwater detention facilities on the property, or any maintenance agreement for such facilities, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

8. The owner makes no representations with respect to the presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any wastewater system on the property and the costs associated with maintaining, repairing, or inspecting any wastewater system, including any costs or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

9. 8. The owner makes no representations with respect to any right to install or use solar energy collection devices on the property;

10. 9. The owner makes no representations with respect to whether the property is located in one or

182 more special flood hazard areas and purchasers are advised to exercise whatever due diligence they
183 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether
184 the property is located in one or more special flood hazard areas, (ii) review of any map depicting
185 special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and
186 conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement
187 pursuant to such contract;

188 ~~14.~~ 10. The owner makes no representations with respect to whether the property is subject to one or
189 more conservation or other easements and that purchasers are advised to exercise whatever due diligence
190 a particular purchaser deems necessary in accordance with terms and conditions as may be contained in
191 the real estate purchase contract, but in any event, prior to settlement pursuant to such contract; and

192 ~~12.~~ 11. The owner makes no representations with respect to whether the property is subject to a
193 community development authority approved by a local governing body pursuant to Article 6
194 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2 and that purchasers are advised to exercise whatever
195 due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
196 contained in the real estate purchase contract, including determining whether a copy of the resolution or
197 ordinance has been recorded in the land records of the circuit court for the locality in which the
198 community development authority district is located for each tax parcel included in the district pursuant
199 to § 15.2-5157, but in any event, prior to settlement pursuant to such contract.

200 C. The residential property disclosure statement shall be delivered in accordance with § 55-520.

201 **§ 55-519.5. Required disclosures; stormwater management facilities.**

202 A. For the purposes of this section:

203 "Declaration" means the same as that term is defined in § 55-509.

204 "Property owners' association" means the same as that term is defined in § 55-509.

205 B. Notwithstanding the exemptions in § 55-518, (i) the owner of residential real property shall
206 disclose to the purchaser the presence of any stormwater management facilities located on the owner's
207 property and any maintenance agreement for such facilities and (ii) the owner of residential real
208 property subject to the declaration of a property owners' association shall disclose to the purchaser the
209 presence of any stormwater management facilities that the association has the obligation to repair,
210 replace, or restore and any maintenance agreement for such facilities. Such disclosures shall be
211 provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in
212 accordance with this chapter.