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HOUSE BILL NO. 2081

Offered January 9, 2019

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A BILL to amend and reenact §§ 54.1-2349, 55-79.93:1, 55-504.1, 55-509.6, 55-509.7, 55-516.1, and 55-529 of the Code of Virginia, relating to Common Interest Community Board; association fees; Common Interest Community Management Information Fund.

Patron—Watts

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2349, 55-79.93:1, 55-504.1, 55-509.6, 55-509.7, 55-516.1, and 55-529 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include ~~but not be limited to~~ the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. ~~The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) \$1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding year. For the purposes of clause (ii), no minimum payment shall be less than \$10. The annual payment shall be remitted to the State Treasurer and Upon application for license and each renewal thereof, the applicant shall pay a fee established by the Board, which shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529;~~

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter;

7. Establish, by regulation, an education-based certification program for persons who are involved in

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59 the business or activity of providing management services for compensation to common interest
60 communities. The Board shall have the authority to approve training courses and instructors in
61 furtherance of the provisions of this chapter; and

62 8. Develop and publish best practices for the content of declarations consistent with the requirements
63 of the Property Owners' Association Act (§ 55-508 et seq.).

64 B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the
65 promulgation of regulations to carry out the requirements thereof.

66 2. The Board shall also be responsible for the enforcement of this chapter, provided that the Real
67 Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real
68 estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter
69 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

70 3. For purposes of enforcement of this chapter or Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et
71 seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, any requirement for the conduct of a
72 hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to
73 § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

74 C. The Board is authorized to obtain criminal history record information from any state or federal
75 law-enforcement agency relating to an applicant for licensure or certification. Any information so
76 obtained is for the exclusive use of the Board and shall not be released to any other person or agency
77 except in furtherance of the investigation of the applicant or with the authorization of the applicant or
78 upon court order.

79 D. Notwithstanding the provisions of subsection E of § 55-530, the Board may receive a complaint
80 directly from any person aggrieved by an association's failure to deliver a resale certificate or disclosure
81 packet within the time period required under § 55-79.97, 55-79.97:1, 55-484, 55-509.5, 55-509.6, or
82 55-509.7.

83 **§ 55-79.93:1. Annual report by unit owners' association.**

84 A. The unit owners' association shall file an annual report in a form and at such time as prescribed
85 by regulations of the agency. The filing of the annual report required by this section shall commence
86 upon the termination of the declarant control period pursuant to § 55-79.74. The annual report shall be
87 accompanied by a ~~fixed~~ fee in an amount established by the agency, *which shall be paid into the state*
88 *treasury and credited to the Common Interest Community Management Information Fund established*
89 *pursuant to § 55-529.*

90 B. The agency may accept copies of forms submitted to other state agencies to satisfy the
91 requirements of this section if such forms contain substantially the same information required by the
92 agency.

93 C. The unit owners' association shall also remit to the agency an annual payment as follows:

94 1. The lesser of:

95 a. \$1,000 or such other amount as established by agency regulation; or

96 b. Five hundredths of one percent (0.05%) of the unit owners' association's gross assessment income
97 during the preceding year.

98 2. For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.

99 D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of
100 the Common Interest Community Management Fund established pursuant to § 55-529.

101 **§ 55-504.1. Annual report by associations.**

102 A. The association shall file an annual report in a form and at such time as prescribed by regulations
103 of the agency. The filing of the annual report required by this section shall commence upon the
104 termination of any declarant control period reserved pursuant to § 55-460. The annual report shall be
105 accompanied by a ~~fixed~~ fee in an amount established by the agency, *which shall be paid into the state*
106 *treasury and credited to the Common Interest Community Management Information Fund established*
107 *pursuant to § 55-529.*

108 B. The agency may accept copies of forms submitted to other state agencies to satisfy the
109 requirements of this section if such forms contain substantially the same information required by the
110 agency.

111 C. The association shall also remit to the agency an annual payment as follows:

112 1. The lesser of:

113 a. \$1,000 or such other amount as established by agency regulation; or

114 b. Five hundredths of one percent (0.05%) of the association's gross assessment income during the
115 preceding year.

116 2. For the purposes of subdivision 1 b, no minimum payment shall be less than \$10.00.

117 D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of
118 the Common Interest Community Management Fund established pursuant to § 55-529.

119 **§ 55-509.6. Fees for disclosure packet; professionally managed associations.**

120 A. A professionally managed association or its common interest community manager may charge

certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55-509.5, and for such other services as set out in this section. The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

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

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

2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an electronic copy 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. The preparer of the disclosure packet shall provide the disclosure packet directly to the designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

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

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

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

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

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

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

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

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

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

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

186 G. If an association disclosure packet has been issued for a lot within the preceding 12-month period,
187 a person specified in the written instructions of the seller or the seller's authorized agent, including the
188 seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure
189 packet update. The requester shall specify whether the disclosure packet update shall be delivered
190 electronically or in hard copy, and shall specify the complete contact information of the parties to whom
191 the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the
192 written request.

193 H. The settlement agent may request a financial update. The requester shall specify whether the
194 financial update shall be delivered electronically or in hard copy, and shall specify the complete contact
195 information of the parties to whom the update shall be delivered. The financial update shall be delivered
196 within three business days of the written request.

197 I. A reasonable fee for the disclosure packet update or financial update may be charged by the
198 preparer not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the
199 requester may request that the association or the common interest community manager perform an
200 additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for
201 a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time
202 settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay
203 such costs of the seller at settlement. Neither the association nor its common interest community
204 manager, if any, shall require cash, check, certified funds, or credit card payments at the time the
205 request is made for the disclosure packet update. The requester may request that the specified update be
206 provided in hard copy or in electronic form.

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

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

220 L. If the association or its common interest community manager has been requested in writing to
221 furnish the association disclosure packet required by § 55-509.5, failure to provide the association
222 disclosure packet substantially in the form provided in this section shall be deemed a waiver of any
223 claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or
224 architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer
225 of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages
226 sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated
227 to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association
228 as to all matters arising after the date of the settlement of the sale.

229 M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the
230 association disclosure packet within 14 days against any (i) property owners' association pursuant to
231 § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations
232 promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as
233 applicable.

234 N. No association may collect fees authorized by this section unless the association (i) is registered
235 with the Common Interest Community Board, (ii) is current in filing the most recent annual report *and*
236 *fee* with the Common Interest Community Board pursuant to § 55-516.1, (iii) is current in paying the
237 ~~annual payment to the Common Interest Community Board pursuant to § 55-516.1~~ and any assessment
238 made by the Common Interest Community Board pursuant to § 55-530.1, and (iv) provides the
239 disclosure packet electronically if so requested by the requester.

240 **§ 55-509.7. Fees for disclosure packets; associations not professionally managed.**

241 A. An association that is not professionally managed may charge a fee for the preparation and
242 issuance of the association disclosure packet required by § 55-509.5. Any fee shall reflect the actual cost
243 of the preparation of the association disclosure packet, but shall not exceed \$0.10 per page of copying

costs or a total of \$100 for all costs incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify whether the association disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent. The association shall advise the requestor if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

B. At the option of the seller or the seller's authorized agent, with the consent of the association, a reasonable fee may be charged for (i) expediting the inspection, preparation, and delivery of the disclosure packet, if completed within five business days of the request, not to exceed \$50; (ii) an additional hard copy of the disclosure packet not to exceed \$25 per hard copy; and (iii) third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet not to exceed an amount equal to the actual cost paid.

C. No fees other than those specified in this section shall be charged by the association for compliance with duties and responsibilities under this section. Any fees charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

D. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request therefor.

E. The settlement agent may request a financial update. The requestor 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 therefor.

F. A reasonable fee for the disclosure packet update or a financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the association perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed \$50. Any fees charged for the specified update shall be collected at the time of delivery of the update. The association shall not require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

G. No association may require the requestor to request the specified update electronically. The seller or his 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 association. If the requestor asks that the specified update be provided in electronic format, the association shall not require the requester to pay any fees to use the provider's electronic network or system. If the requestor asks that the specified update be provided in electronic format, the requestor may designate no more than two additional recipients to receive the specified update in electronic format at no additional charge. A copy of the specified update shall be provided to the seller or his authorized agent.

H. When a disclosure packet has been delivered as required by § 55-509.5, the 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 lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

I. If the association has been requested to furnish the association disclosure packet required by this section, failure to provide the association disclosure packet 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 lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural

guidelines of the association as to all matters arising after the date of the settlement of the sale.

J. No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report *and fee* with the Common Interest Community Board *pursuant to § 55-516.1*, and (iii) is current in paying the annual payment to the Common Interest Community Board ~~pursuant to § 55-516.1~~ and any assessment made by the Common Interest Community Board pursuant to § 55-530.1.

K. An association that is not professionally managed may charge and collect fees for inspection of the property, the preparation and issuance of an association disclosure packet, and such other services as set out in § 55-509.6, provided that the association provides the disclosure packet electronically if so requested by the requester and otherwise complies with § 55-509.6.

§ 55-516.1. Annual report by association.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The annual report shall be accompanied by a ~~fixed~~ fee in an amount established by the Board, *which shall be paid into the state treasury and credited to the Common Interest Community Management Information Fund established pursuant to § 55-529.*

B. The Common Interest Community Board may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the Common Interest Community Board.

C. The association shall also remit to the agency an annual payment as follows:

1. The lesser of:

a. \$1,000 or such other amount as established by agency regulation; or

b. Five hundredths of one percent (0.05%) of the association's gross assessment income during the preceding year.

2. For the purposes of subdivision 1 b, no minimum payment shall be less than \$10.00.

D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to ~~§ 55-529~~.

§ 55-529. Common Interest Community Management Information Fund.

A. There is hereby created the Common Interest Community Management Information Fund to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. The Fund shall consist of money paid into it pursuant to §§ 54.1-2349, 55-79.93:1, 55-504.1, and 55-516.1. The Fund shall be established on the books of the Comptroller, and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § 55-530.1. Interest earned on the Fund shall be credited to the Fund.

B. *Following the close of any biennium, when the Common Interest Community Management Information Fund shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Board, the Board shall revise the fees levied by it for placement into the Fund so that the fees are sufficient but not excessive to cover expenses.*