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HOUSE BILL NO. 2099

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 54.1-500, 54.1-1500, 54.1-1500.1, 54.1-1500.2, 54.1-2349, 54.1-2354, 54.1-2400.01:2, 54.1-3204, 55-79.42:1, 55-79.97:1, 55-509.3, 55-509.6, 55-528, 55-529, and 55-530.1 of the Code of Virginia; to amend the Code of Virginia by adding in Article 4 of Chapter 4.2 of Title 55 a section numbered 55-79.104 and by adding in Article 3 of Chapter 26 of Title 55 a section numbered 55-516.3; and to repeal Article 5 (§§ 54.1-1144, 54.1-1145, and 54.1-1146) of Chapter 11 of Title 54.1, Article 3 (§§ 54.1-1506 through 54.1-1509) of Chapter 15 of Title 54.1, and §§ 54.1-2346, 54.1-2347, and 54.1-2353 of the Code of Virginia, relating to professions and occupations; deregulation of certain professions.

Patrons—Freitas and Webert

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-500, 54.1-1500, 54.1500.1, 54.1-1500.2, 54.1-2349, 54.1-2354, 54.1-2400.01:2, 54.1-3204, 55-79.42:1, 55-79.97:1, 55-509.3, 55-509.6, 55-528, 55-529, and 55-530.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 4.2 of Title 55 a section numbered 55-79.104 and by adding in Article 3 of Chapter 26 of Title 55 a section numbered 55-516.3 as follows:

§ 54.1-500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.

"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.

"Accredited renovation training program" means a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling.

"Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.

"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

"Asbestos contractor's license" means an authorization issued by the Board permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos-containing materials" or "ACM" means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.

"Asbestos inspector's license" means an authorization issued by the Board permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.

"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.

"Asbestos management planner's license" means an authorization issued by the Board permitting a person to develop or alter an asbestos management plan.

"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.

"Asbestos project designer's license" means an authorization issued by the Board permitting a person to design an asbestos abatement project.

"Asbestos project monitor's license" means an authorization issued by the Board permitting a person to monitor an asbestos project, subject to Department regulations.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Board permitting an individual to

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59 work on an asbestos project.

60 "Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

61 "Dust clearance sampling" means an on-site collection of dust or other debris that is present after the
62 completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a
63 report explaining the results.

64 "Dust sampling technician" means an individual licensed by the Board to perform dust clearance
65 sampling.

66 "Friable" means that the material when dry may be crumbled, pulverized, or reduced to powder by
67 hand pressure and includes previously nonfriable material after such previously nonfriable material
68 becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by
69 hand pressure.

70 "Home inspection" means any inspection of a residential building for compensation conducted by a
71 licensed home inspector. A home inspection shall include a written evaluation of the readily accessible
72 components of a residential building, including heating, cooling, plumbing, and electrical systems;
73 structural components; foundation; roof; masonry structure; exterior and interior components; and other
74 related residential housing components. A home inspection may be limited in scope as provided in a
75 home inspection contract, provided that such contract is not inconsistent with the provisions of this
76 chapter or the regulations of the Board. For purposes of this chapter, ~~residential building energy analysis~~
77 ~~alone, as defined in § 54.1-1144, an inspection, investigation, or survey of a dwelling or other structure~~
78 ~~solely to evaluate, measure, or quantify its energy consumption and efficiency, including lighting, HVAC,~~
79 ~~electronics, appliances, water heaters, insulation, and water conservation, and to make recommendations~~
80 ~~to reduce energy consumption and improve efficiency shall not be considered a home inspection.~~

81 "Home inspector" means a person who meets the criteria of education, experience, and testing
82 required by this chapter and regulations of the Board and who has been licensed by the Board to
83 perform home inspections.

84 "Lead abatement" means any measure or set of measures designed to permanently eliminate
85 lead-based paint hazards, including lead-contaminated dust or soil.

86 "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of
87 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

88 "Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and
89 abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and
90 lead-contaminated soil.

91 "Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at
92 or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15
93 U.S.C. § 2683).

94 "Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the
95 Environmental Protection Agency.

96 "Lead contractor" means a person who has met the Board's requirements and has been issued a
97 license by the Board to enter into contracts to perform lead abatements.

98 "Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based
99 paint and the provisions of a report explaining the results of the investigation.

100 "Lead inspector" means an individual who has been licensed by the Board to conduct lead
101 inspections and abatement clearance testing.

102 "Lead project design" means any descriptive form written as instructions or drafted as a plan
103 describing the construction or setting up of a lead abatement project area and the work practices to be
104 utilized during the lead abatement project.

105 "Lead project designer" means an individual who has been licensed by the Board to prepare lead
106 project designs.

107 "Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity
108 and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm
109 conducting the risk assessment, explaining the results of the investigation and options for reducing
110 lead-based paint hazards.

111 "Lead risk assessor" means an individual who has been licensed by the Board to conduct lead
112 inspections, lead risk assessments and abatement clearance testing.

113 "Lead supervisor" means an individual who has been licensed by the Board to supervise lead
114 abatements.

115 "Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board
116 to perform lead abatement.

117 "Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association
118 or any other individual or entity.

119 "Principal instructor" means the individual who has the primary responsibility for organizing and
120 teaching an accredited asbestos training program, an accredited lead training program, an accredited

renovation training program, or any combination thereof.

"Renovation" means the modification of any existing structure or portion thereof, for compensation, that results in the disturbance of painted surfaces, unless that activity is (i) performed as a part of a lead abatement or (ii) limited in scope to the site work or remediation as referenced in the definition of contractor in § 54.1-1100. As used in this definition, "compensation" shall include the receipt of (a) pay for work performed, such as that paid to contractors and subcontractors; (b) wages, including but not limited to those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (c) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

"Renovation contractor" means a person who has met the Board's requirements and has been issued a license by the Board to conduct renovations.

"Renovator" means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Training manager" means the individual responsible for administering a training program and monitoring the performance of instructors for an accredited asbestos training, accredited lead training program or accredited renovation training program.

CHAPTER 15.

HEARING AID SPECIALISTS AND OPTICIANS.

§ 54.1-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Audiologist" means the same as that term is defined in § 54.1-2600.

"Board" means the Board for Hearing Aid Specialists and Opticians.

"Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories, including earmolds, but excluding batteries and cords.

"Licensed hearing aid specialist" means any person who is the holder of a hearing aid specialist license issued by the Board for Hearing Aid Specialists and Opticians.

"Licensed optician" means any person who is the holder of an optician license issued by the Board for Hearing Aid Specialists and Opticians.

"Licensed optometrist" means any person authorized by Virginia law to practice optometry.

"Licensed physician" means any person licensed by the Board of Medicine to practice medicine and surgery.

"Optician" means any person not exempted by § 54.1-1506 who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances, to the human face.

"Practice of audiology" means the same as that term is defined in § 54.1-2600.

"Practice of fitting or dealing in hearing aids" means (i) the measurement of human hearing by means of an audiometer or by any other means solely for the purpose of making selections, adaptations or sale of hearing aids, (ii) the sale of hearing aids, or (iii) the making of impressions for earmolds. A practitioner, at the request of a physician or a member of a related profession, may make audiograms for the professional's use in consultation with the hard-of-hearing.

"Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or practitioners.

"Temporary permit" means a permit issued while an applicant is in training to become a licensed hearing aid specialist.

§ 54.1-1500.1. Board for Hearing Aid Specialists; qualifications and terms of members; officers.

A. The Board for Hearing Aid Specialists and Opticians shall consist of *15 seven* members, as follows: four licensed hearing aid specialists, of which at least one shall be licensed as an audiologist by the Board of Audiology and Speech-Language Pathology; *six licensed opticians*; one otolaryngologist; *one ophthalmologist*, and *three two* citizen members.

B. One of the citizen members shall be a hearing aid user or a person who has a family member who is or has been a hearing aid user. Each hearing aid specialist and the otolaryngologist shall have at least five years of experience in their respective fields immediately prior to appointment. *Each of the opticians shall have at least five years of experience prior to appointment and the ophthalmologist shall have practiced ophthalmology for at least five years prior to appointment.*

C. The terms of Board members shall be four years.

D. The Board shall elect a chairman and vice-chairman from its membership.

§ 54.1-1500.2. Nominations for Board appointments.

A. The appointment of the otolaryngologist member may be made from a list of at least three names submitted to the Governor by the Medical Society of Virginia. The appointment of one of the hearing aid specialist members may be made from a list of at least three names submitted to the Governor by the Speech-Language Hearing Association of Virginia. The appointment of the remaining hearing aid specialist members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Society of Hearing Aid Specialists. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Society or Association, respectively, of any vacancy other than by expiration, and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

B. The appointment of the licensed optician members may be made from a list of at least three names for each vacancy submitted to the Governor by the Opticians Association of Virginia for each appointee who is an optician, and by the Medical Society of Virginia for each appointee who is a physician. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Society or Association, respectively, of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

§ 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 shall be placed to the credit of the Common Interest Community Management 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. 2. *Develop and publish best practices for associations, common interest community managers, and employees* 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 Such best practices shall enable an association or its common interest community manager to evaluate whether individuals providing management services possess the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria best practices shall include obtaining 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, 3. Develop and publish model standards of conduct for associations, common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter, and employees 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;

7. 4. Establish, by regulation, an education-based certification program educational programs for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter; and

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

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

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

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

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

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

§ 54.1-2354. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this chapter and the provisions of Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, as applicable.

§ 54.1-2400.01:2. Ophthalmic prescription defined; who may provide ophthalmic prescriptions.

A. As used in this section:

"Contact lens" means any lens that is placed directly on the surface of the eye, whether or not the lens is intended to correct a visual defect, including any cosmetic, therapeutic, or corrective contact lens.

"Ophthalmic prescription" means a handwritten or electronic order of a provider that includes (i) in the case of contact lenses, all information required by the Fairness to Contact Lens Consumers Act, 15 U.S.C. §§ 7601 et seq., (ii) in the case of prescription eyeglasses, all information required by the Ophthalmic Practice Rule, also known as the Eyeglass Rule, 16 C.F.R. Part 456, and (iii) necessary and appropriate information for the dispensing of prescription eyeglasses or contact lenses for a patient, including the provider's name, physical address at which the provider practices, and telephone number.

"Provider" means an ophthalmologist licensed by the Board of Medicine pursuant to Chapter 29 (§ 54.1-2900 et seq.) or an optometrist licensed by the Board of Optometry pursuant to Chapter 32 (§ 54.1-3200 et seq.).

B. For the purpose of a provider prescribing spectacles, eyeglasses, lenses, or contact lenses to a patient, a provider shall establish a bona fide provider-patient relationship by an examination (i) in person, (ii) through face-to-face interactive, two-way, real-time communication, or (iii) store-and-forward technologies when all of the following conditions are met: (a) the provider obtains an updated medical history at the time of prescribing; (b) the provider makes a diagnosis at the time of prescribing; (c) the provider conforms to the standard of care expected of in-person care as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition; (d) the ophthalmic prescription is not determined solely by use of an online questionnaire; (e) the provider is actively licensed in the Commonwealth and authorized to

prescribe; and (f) upon request, the prescriber provides patient records in a timely manner in accordance with the provisions of § 32.1-127.1:03 and all other state and federal laws and regulations.

C. The requirements of this section shall not apply to (i) the sale of eyeglasses not designed to correct or enhance vision by addressing the visual needs of the individual wearer and that may be known as over-the-counter eyeglasses or readers ~~or~~; (ii) ~~a licensed optician providing services in accordance with § 54.1-1509~~ *the preparation and dispensing of eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, according to prescriptions from licensed physicians or licensed optometrists;* (iii) *the duplication and reproduction of previously prepared eyeglasses, spectacles, lenses, or related appurtenances, but not including a contact lens duplicated or reproduced solely from a previously prepared contact lens;* or (iv) *the measurement, adaptation, fitting, and adjustment of eyeglasses, spectacles, lenses, or appurtenances to the human face in the conduct of clause (ii) or (iii).*

D. The provisions of this section shall not apply to ophthalmic prescriptions written prior to July 1, 2017.

§ 54.1-3204. Prohibited acts.

It shall be unlawful for any person:

1. To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.

2. To impersonate a licensed optometrist of like or different name.

3. To buy or sell or fraudulently obtain a diploma or license.

4. To do any act for which if he were an optometrist his license could be revoked as provided by this chapter.

5. To possess any trial lenses, trial frames, graduated test cards, appliances or instruments used in the practice of optometry, self-testing devices or eyeglass vending machines for the purpose of fitting or prescribing glasses in the practice of optometry, unless he is or unless he regularly employs on the premises a licensed optometrist or a licensed physician.

6. To publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of the Board governing advertising by optometrists.

7. To sell, provide, furnish, supply or duplicate eyeglasses, or lenses for the correction of vision without the prescription of a licensed physician or licensed optometrist, unless he is the holder of a license to practice optometry or a license to practice medicine under the laws of this Commonwealth.

8. To sell or dispense contact lenses, including plano or cosmetic lenses, without holding a license issued by the Board. This subdivision shall not apply to ~~a licensed optician~~ *a person who engages in the preparation, duplication, or reproduction of contact lenses, for the intended wearer or user,* operating or working in a retail establishment, when selling or dispensing contact lenses, including plano or cosmetic lenses, upon the valid written prescription of an individual licensed to practice medicine or osteopathy, or a licensed optometrist.

9. To dispense, administer, or sell an ophthalmic device containing Schedule III, IV, or VI controlled substances or an over-the-counter medication without holding a license issued by the Board, including TPA certification. An "ophthalmic device" shall mean any device, as defined in the Drug Control Act (§ 54.1-3400 et seq.) customarily used primarily for ophthalmic purposes, including an ophthalmic device classified by the United States Food and Drug Administration as a drug. Nothing in this ~~subsection~~ *subdivision* shall preclude a pharmacist from dispensing an ophthalmic device, as defined in this subsection, upon the written and valid prescription of an optometrist, providing the patient is then advised by the pharmacist to return for follow-up care to the optometrist prescribing the ophthalmic device.

The provisions of this section shall be enforced in accordance with this chapter and § 54.1-2506.

§ 55-79.42:1. Association charges.

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55-79.83, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55-79.97:1. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any ~~(a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349,~~ and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

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

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the

unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

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

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

2. The preparation and delivery of the resale certificate 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. Only one fee shall be charged for the preparation and delivery of the resale certificate;

3. At the option of the seller or the seller's authorized agent, with the consent of the unit owners' association or the common interest community manager, expediting the inspection, preparation, and delivery of the resale certificate, 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 resale certificate, 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 resale certificate; and

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

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

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

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website. The unit owners' 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 that the seller or the seller's authorized agent will know such fees at the time of requesting the resale certificate.

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

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' 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 resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

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

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's

428 authorized agent or the purchaser or the purchaser's authorized agent, may request a resale certificate
429 update. The requester shall specify whether the resale certificate update shall be delivered electronically
430 or in hard copy and shall specify the complete contact information of the parties to whom the update
431 shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

432 H. The settlement agent may request a financial update. The requester shall specify whether the
433 financial update shall be delivered electronically or in hard copy and shall specify the complete contact
434 information of the parties to whom the update shall be delivered. The financial update shall be delivered
435 within three business days of the written request.

436 I. A reasonable fee for the resale certificate update or financial update may be charged by the
437 preparer, not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the
438 requester may request that the unit owners' association or the common interest community manager
439 perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed
440 \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the
441 sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs at settlement.
442 Neither the unit owners' association nor its common interest community manager, if any, shall require
443 cash, check, certified funds, or credit card payments at the time the request is made for the resale
444 certificate update. The requester may request that the specified update be provided in hard copy or in
445 electronic form.

446 J. No unit owners' association or common interest community manager may require the requester to
447 request the specified update electronically. The seller or the seller's authorized agent shall continue to
448 have the right to request a hard copy of the specified update in person at the principal place of business
449 of the unit owners' association. If the requester asks that the specified update be provided in electronic
450 format, neither the unit owners' association nor its common interest community manager may require the
451 requester to pay any fees to use the provider's electronic network or system. A copy of the specified
452 update shall be provided to the seller or the seller's authorized agent.

453 K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners'
454 association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the
455 assessment account and the status of the unit with respect to any violation of the condominium
456 instruments as of the date of the statement unless the purchaser had actual knowledge that the contents
457 of the resale certificate were in error.

458 L. If the unit owners' association or its common interest community manager has been requested in
459 writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate
460 substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent
461 assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural
462 guidelines existing as of the date of the request with respect to the subject unit. The preparer of the
463 resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the
464 seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the
465 condominium instruments, rules and regulations, and architectural guidelines of the unit owners'
466 association as to all matters arising after the date of the settlement of the sale.

467 M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the
468 resale certificate within 14 days against any (i) unit owners' association pursuant to § 54.1-2351 or (ii)
469 common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and
470 may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

471 **§ 55-79.104. Protection of the interests of associations; appointment of receiver for common**
472 **interest community manager.**

473 A. A common interest community manager owes a fiduciary duty to the associations to which it
474 provides management services with respect to the manager's handling of the funds or the records of
475 each association. All funds deposited with the common interest community manager shall be handled in
476 a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an
477 FDIC-insured financial institution separate from the assets of the common interest community manager.
478 The funds shall be the property of the association and shall be segregated for each depository in the
479 records of the common interest community manager in a manner that permits the funds to be identified
480 on an association basis. All records having administrative or fiscal value to the association that a
481 common interest community manager holds, maintains, compiles, or generates on behalf of a common
482 interest community are the property of the association. A common interest community manager may
483 retain and dispose of association records in accordance with a policy contained in the contract between
484 the common interest community manager and the association. Within a reasonable time after a written
485 request for any such records, the common interest community manager shall provide copies of the
486 requested records to the association at the association's expense. The common interest community
487 manager shall return all association records that it retains and any originals of legal instruments or
488 official documents that are in the possession of the common interest community manager to the
489 association within a reasonable time after termination of the contract for management services without

additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If a unit owners' association has reasonable cause to believe that its common interest community manager is unable to properly discharge its fiduciary responsibilities, the unit owners' association may submit a petition to the circuit court of the county or city where the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the common interest community manager subject to the petition and pertaining to the petitioner. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If a unit owners' association has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to the unit owners' association, the unit owners' association may file a petition with the circuit court of the county or city where the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager; and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property may reasonably become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Unless otherwise ordered by the court in the appointing order, the receiver shall:

1. Prepare and file with the court a list of all associations managed by the subject common interest community manager;

2. Notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager;

3. Facilitate the transfer of records and information to such successor common interest community manager;

4. Identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business;

5. Prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court;

6. Attempt to collect any accounts receivable related to the subject common interest community manager's business;

7. Identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business;

8. Terminate the subject common interest community manager's business;

9. Reduce to cash all of the assets of the subject common interest community manager;

10. Determine the nature and amount of all claims of creditors of the subject common interest

community manager, including associations to which the subject common interest community manager provided management services; and

11. Prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report prepared and filed pursuant to subdivision 1 of subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant to § 55-530.1, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and (c) that an emergency exists and (ii) the board of directors of such insolvent common interest community manager approves a plan of merger of such common interest community manager into another common interest community manager, then compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the court of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1.

J. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and (c) that an emergency exists and (ii) the boards of directors of both common interest community managers consent to the terms and conditions of such transfer, including the assumption of all or certain liabilities, then the court shall enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer.

K. If a merger under subsection I or a sale of assets under subsection J occurs, the receiver shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The receiver's finding of insolvency shall become final if a hearing before the court is not requested by any such shareholder within such 30-day period. If, after such hearing, the court finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the court finds that such common interest community manager was insolvent, its order shall be final.

L. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

§ 55-509.3. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55-509.6 or 55-509.7 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community

manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55-509.6 or 55-509.7. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator pursuant to § 54.1-2349 or 54.1-2352, as applicable.

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

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.

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

G. 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 the seller's authorized agent, including the seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester 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 update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request.

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

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the association or the common interest community manager 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 \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requester may request that the specified update be provided in hard copy or in electronic form.

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

K. When an association 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.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55-509.5, 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 preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the 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.

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

N. 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 with the Common Interest Community Board, (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, and (iv) provides the disclosure packet electronically if so requested by the requester.

§ 55-516.3. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If a property owners' association has reasonable cause to believe that its common interest community manager is unable to properly discharge its fiduciary responsibilities, the property owners' association may submit a petition to the circuit court of the county or city where the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager and pertaining to the petitioner. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If a property owners' association has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to the property owners' association, the property owners' association may file a petition with the circuit court of the county or city where the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property may reasonably become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the

797 appointing order, (i) prepare and file with the court a list of all associations managed by the subject
798 common interest community manager; (ii) notify in writing all of the associations to which the subject
799 common interest community manager provides management services of the appointment, and take
800 whatever action the receiver deems appropriate to protect the interests of the associations until such
801 time as the associations have had an opportunity to obtain a successor common interest community
802 manager; (iii) facilitate the transfer of records and information to such successor common interest
803 community manager; (iv) identify and take control of all bank accounts, including without limitation
804 trust and operating accounts, over which the subject common interest community manager had signatory
805 authority in connection with its management business; (v) prepare and submit an accounting of receipts
806 and disbursements and account balances of all funds under the receiver's control for submission to the
807 court within four months of the appointment and annually thereafter until the receivership is terminated
808 by the court; (vi) attempt to collect any accounts receivable related to the subject common interest
809 community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from
810 the subject common interest community manager's business, or assets acquired with funds wrongfully
811 diverted from the subject common interest community manager's business; (viii) terminate the subject
812 common interest community manager's business; (ix) reduce to cash all of the assets of the subject
813 common interest community manager; (x) determine the nature and amount of all claims of creditors of
814 the subject common interest community manager, including associations to which the subject common
815 interest community manager provided management services; and (xi) prepare and file with the court a
816 report of such assets and claims proposing a plan for the distribution of funds in the receivership to
817 such creditors in accordance with the provisions of subsection F.

818 F. Upon the court's approval of the receiver's report prepared and filed pursuant to subdivision 1 of
819 subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall
820 distribute the assets of the common interest community manager and funds in the receivership first to
821 clients whose funds were or ought to have been held in a fiduciary capacity by the subject common
822 interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to
823 subsection G, and thereafter to the creditors of the subject common interest community manager, and
824 then to the subject common interest community manager or its successors in interest.

825 G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the
826 court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses.
827 If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the
828 Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant
829 to § 55-530.1, to the extent that the said Fund has funds available. The Fund shall have a claim against
830 the subject common interest community manager for the amount paid.

831 H. The court may determine whether any assets under the receiver's control should be returned to
832 the subject common interest community manager.

833 I. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that its
834 merger into another common interest community manager is desirable for the protection of the
835 associations to which such common interest community manager provides management services, and (c)
836 that an emergency exists and (ii) the board of directors of such insolvent common interest community
837 manager approves a plan of merger of such common interest community manager into another common
838 interest community manager; then compliance with the requirements of § 13.1-718 shall be dispensed
839 with as to such insolvent common interest community manager and the approval by the court of such
840 plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the
841 outstanding shares of such insolvent common interest community manager for all purposes of Article 12
842 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1.

843 J. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that the
844 acquisition of its assets by another common interest community manager is in the best interests of the
845 associations to which such common interest community manager provides management services, and (c)
846 that an emergency exists and (ii) the boards of directors of both common interest community managers
847 consent to the terms and conditions of such transfer, including the assumption of all or certain
848 liabilities; then the court shall enter an order transferring some or all of the assets of such insolvent
849 common interest community manager to such other common interest community manager, and no
850 compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730
851 through 13.1-741 be applicable to such transfer.

852 K. If a merger under subsection I or a sale of assets under subsection J occurs, the receiver shall
853 provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the
854 stockholders of record of the insolvent common interest community manager for the purpose of
855 providing such shareholders an opportunity to challenge the finding that the common interest community
856 manager is insolvent. The relevant books and records of such insolvent common interest community
857 manager shall remain intact and be made available to such shareholders for a period of 30 days after
858 such notice is sent. The receiver's finding of insolvency shall become final if a hearing before the court

is not requested by any such shareholder within such 30-day period. If, after such hearing, the court finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the court finds that such common interest community manager was insolvent, its order shall be final.

L. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

§ 55-528. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association" includes condominium, cooperative, or property owners' associations.

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § 2.2-4519, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

"Board" means the Common Interest Community Board.

"Claimant" means upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to § 54.1-2353 55-79.104 or 55-516.3 in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

"Common interest community" means real estate located within the Commonwealth subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors of a property owners' association.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative.

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

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.

§ 55-530.1. Common Interest Community Management Recovery Fund.

A. There is hereby created the Common Interest Community Management Recovery Fund (the Fund) to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date shall be assessed \$25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations,

920 or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or
921 savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance
922 Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits
923 Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan
924 associations, or savings banks located in the Commonwealth shall not be considered investment of such
925 funds for purposes of this section. Funds maintained by the Director may be invested in securities that
926 are legal investments for fiduciaries under the provisions of § 64.2-1502.

927 Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The
928 remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest
929 Community Management Information Fund or accrue to the Fund.

930 C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000. Whenever the
931 Director determines that the principal balance of the Fund is or will be less than such minimum
932 principal balance, the Director shall immediately inform the Board. At the same time, the Director may
933 recommend that the Board transfer a fixed amount from the Common Interest Community Management
934 Information Fund to the Fund to bring the principal balance of the Fund to the amount required by this
935 subsection. Such transfer shall be considered by the Board within 30 days of the notification of the
936 Director.

937 D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the
938 minimum amount required by this section, or if a transfer to the fund has not occurred, the Board shall
939 assess each association ~~and each common interest community manager~~, within 30 days of notification by
940 the Director, a sum sufficient to bring the principal balance of the Fund to the required minimum
941 amount. The amount of such assessment shall be allocated among the associations ~~and common interest~~
942 ~~community managers~~ in proportion to the each payor's most recently paid annual assessment, or if an
943 association ~~or common interest community manager~~ has not paid an annual assessment previously, in
944 proportion to the average annual assessment most recently paid by associations ~~or common interest~~
945 ~~community managers~~ respectively. The Board may *determine the need and issue an order for* an
946 assessment at any time in addition to any required assessment. ~~Assessments made pursuant to this~~
947 ~~subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license~~
948 ~~renewal.~~

949 Notice to ~~common interest community managers~~ and the governing boards of associations of these
950 assessments shall be by first-class mail, and payment of such assessments shall be made by first-class
951 mail addressed to the Director within 45 days after the mailing of such notice.

952 E. ~~If any common interest community manager fails to remit the required payment within 45 days of~~
953 ~~the mailing, the Director shall notify the common interest community manager by first-class mail at the~~
954 ~~latest address of record filed with the Board. If no payment has been received by the Director within 30~~
955 ~~days after mailing the second notice, the license shall be automatically suspended. The license shall be~~
956 ~~restored only upon the actual receipt by the Director of the delinquent assessment.~~

957 F. If any association fails to remit the required payment within 45 days of the mailing, the Director
958 shall notify the association by first-class mail at the latest address of record filed with the Board. If no
959 payment has been received by the Director within 30 days after mailing the second notice, it shall be
960 deemed a knowing and willful violation of this section by the governing board of the association.

961 G. ~~F.~~ At the close of each fiscal year, whenever the balance of the fund exceeds \$5 million, the
962 amount in excess of \$5 million shall be transferred to the Virginia Housing Trust Fund established
963 pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for payments of costs as set forth in this
964 chapter and transfers pursuant to this subsection, there shall be no transfers out of the fund, including
965 transfers to the general fund, regardless of the balance of the fund.

966 H. ~~G.~~ A claimant may seek recovery from the fund subject to the following conditions:

967 1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

968 2. Upon proper application to the Director, in those cases in which there are not sufficient funds to
969 pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or
970 ought to have been held in a fiduciary capacity by the subject common interest community manager, the
971 Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient
972 funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § ~~54.1-2353~~
973 ~~55-79.104 or § 55-516.3~~ by the court appointing the receiver; or (ii) to restore all funds that were or
974 ought to have been held in a fiduciary capacity by the subject common interest community manager, as
975 certified by the court appointing the receiver.

976 3. If the Board finds there has been compliance with the required conditions, the Board shall issue a
977 directive ordering payment of the amount of such shortfall to the claimant from the fund, provided that
978 in no event shall such payment exceed the balance in the fund. When the fund balance is not sufficient
979 to pay the aggregate amount of such shortfall, the Board shall direct payment shall be applied first in
980 satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore
981 the funds that were or ought to have been held in a fiduciary capacity by the subject common interest

community manager. If the Board has reason to believe that there may be additional claims against the fund, the Board may withhold any payment(s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims received exceeds the fund balance, the fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the fund in proportion to the amounts of claims remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the fund against the common interest community manager to the extent that such rights were satisfied from the fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment from the fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

2. That Article 5 (§§ 54.1-1144, 54.1-1145, and 54.1-1146) of Chapter 11 of Title 54.1, Article 3 (§§ 54.1-1506 through 54.1-1509) of Chapter 15 of Title 54.1, and §§ 54.1-2346, 54.1-2347, and 54.1-2353 of the Code of Virginia are repealed.

3. That the terms of persons serving as licensed optician members or the ophthalmologist member of the Board for Hearing Aid Specialists and Opticians pursuant to § 54.1-1500.1 of the Code of Virginia as it was in effect prior to the effective date of this act shall expire on the effective date of this act.

4. That the term of any citizen member of the Board for Hearing Aid Specialists and Opticians serving a term that is set to expire on June 30, 2020, shall expire on the effective date of this act.