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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

121 renovation training program, or any combination thereof.

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

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

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

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

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

140 CHAPTER 15.

141 HEARING AID SPECIALISTS AND OPTICIANS.

142 § 54.1-1500. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

172 § 54.1-1500.1. Board for Hearing Aid Specialists; qualifications and terms of members; officers.

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

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

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

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

184 **§ 54.1-1500.2. Nominations for Board appointments.**

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

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

202 **§ 54.1-2349. Powers and duties of the Board.**

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

205 1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with
 206 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the
 207 prescription of fees, procedures, and qualifications for the issuance and renewal of common interest
 208 community manager licenses. The Board shall annually assess each common interest community
 209 manager an amount equal to the lesser of (i) \$1,000, or such other amount as the Board may establish
 210 by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest
 211 community management during the preceding year. For the purposes of clause (ii), no minimum
 212 payment shall be less than \$10. The annual payment shall be remitted to the State Treasurer and shall be
 213 placed to the credit of the Common Interest Community Management Fund established pursuant to
 214 § 55-529;

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

223 3. Establish criteria for the certification of the employees of common interest community managers 2.
 224 *Develop and publish best practices for associations, common interest community managers, and*
 225 *employees who have principal responsibility for management services provided to a common interest*
 226 *community or who have supervisory responsibility for employees who participate directly in the*
 227 *provision of management services to a common interest community. to ensure the person possesses Such*
 228 *best practices shall enable an association or its common interest community manager to evaluate*
 229 *whether individuals providing management services possess the character and minimum skills to engage*
 230 *properly in the provision of management services to a common interest community. Such criteria best*
 231 *practices shall include obtaining designation as a Certified Manager of Community Associations by the*
 232 *National Board of Certification for Community Association Managers, designation as an Association*
 233 *Management Specialist by the Community Associations Institute, or designation as a Professional*
 234 *Community Association Manager by the Community Associations Institute. As an additional alternative*
 235 *to such designations, the Board shall have authority, by regulation, to include one of the following: (i)*
 236 *successful completion of another Board-approved training program as developed by the Virginia*
 237 *Association of Realtors or other organization, and certifying examination, or (ii) successful completion*
 238 *of a Virginia testing program to determine the quality of the training and educational credentials for and*
 239 *competence of the employees of common interest community managers who participate directly in the*
 240 *provision of management services to a common interest community. The fee paid to the Board for the*
 241 *issuance of such certificate shall be paid to the Common Interest Community Management Information*
 242 *Fund established pursuant to § 55-529;*

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

244 5. Approve accredited common interest community manager training programs;

245 6. Establish, by regulation, *3. Develop and publish model standards of conduct for associations,*
 246 *common interest community managers and for employees of common interest community managers*
 247 *certified in accordance with the provisions of this chapter, and employees who have principal*
 248 *responsibility for management services provided to a common interest community or who have*
 249 *supervisory responsibility for employees who participate directly in the provision of management*
 250 *services to a common interest community;*

251 7. ~~4. Establish, by regulation, an education-based certification program~~ *educational programs* for
 252 persons who are involved in the business or activity of providing management services for compensation
 253 to common interest communities. The Board shall have the authority to approve training courses and
 254 instructors in furtherance of the provisions of this chapter; and

255 8. 5. Develop and publish best practices for the content of declarations consistent with the
 256 requirements of the Property Owners' Association Act (§ 55-508 et seq.).

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

259 2. The Board shall also be responsible for the enforcement of this chapter, provided that the Real
 260 Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real
 261 estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter
 262 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

263 3. For purposes of enforcement of this chapter or Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et
 264 seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, any requirement for the conduct of a
 265 hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to §
 266 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

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

272 D. C. Notwithstanding the provisions of subsection E of § 55-530, the Board may receive a
 273 complaint directly from any person aggrieved by an association's failure to deliver a resale certificate or
 274 disclosure packet within the time period required under § 55-79.97, 55-79.97:1, 55-484, 55-509.5,
 275 55-509.6, or 55-509.7.

276 **§ 54.1-2354. Variation by agreement.**

277 Except as expressly provided in this chapter, provisions of this chapter may not be varied by
 278 agreement, and rights conferred by this chapter may not be waived. ~~All management agreements entered~~
 279 ~~into by common interest community managers shall comply with the terms of this chapter and the~~
 280 ~~provisions of Chapter 4.2 (§ 55-79.39 et seq.); 21 (§ 55-360 et seq.); 24 (§ 55-424 et seq.); or 26 (§~~
 281 ~~55-508 et seq.) of Title 55, as applicable.~~

282 **§ 54.1-2400.01:2. Ophthalmic prescription defined; who may provide ophthalmic prescriptions.**

283 A. As used in this section:

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

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

292 "Provider" means an ophthalmologist licensed by the Board of Medicine pursuant to Chapter 29
 293 (§ 54.1-2900 et seq.) or an optometrist licensed by the Board of Optometry pursuant to Chapter 32 (§
 294 54.1-3200 et seq.).

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

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

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

317 D. The provisions of this section shall not apply to ophthalmic prescriptions written prior to July 1,
 318 2017.

319 **§ 54.1-3204. Prohibited acts.**

320 It shall be unlawful for any person:

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

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

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

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

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

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

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

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

345 9. To dispense, administer, or sell an ophthalmic device containing Schedule III, IV, or VI controlled
 346 substances or an over-the-counter medication without holding a license issued by the Board, including
 347 TPA certification. An "ophthalmic device" shall mean any device, as defined in the Drug Control Act
 348 (§ 54.1-3400 et seq.) customarily used primarily for ophthalmic purposes, including an ophthalmic
 349 device classified by the United States Food and Drug Administration as a drug. Nothing in this
 350 ~~subsection~~ *subdivision* shall preclude a pharmacist from dispensing an ophthalmic device, as defined in
 351 this subsection, upon the written and valid prescription of an optometrist, providing the patient is then
 352 advised by the pharmacist to return for follow-up care to the optometrist prescribing the ophthalmic
 353 device.

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

355 **§ 55-79.42:1. Association charges.**

356 Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise
 357 provided by law, no unit owners' association may make an assessment or impose a charge against a unit
 358 owner unless the charge is (i) authorized under § 55-79.83, (ii) a fee for services provided, or (iii)
 359 related to the provisions set out in § 55-79.97:1. The Common Interest Community Board may assess a
 360 monetary penalty for a violation of this section against any ~~(a)~~ unit owners' association pursuant to
 361 § 54.1-2351 ~~or (b) common interest community manager pursuant to § 54.1-2349~~, and may issue a cease
 362 and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

363 **§ 55-79.97:1. Fees for resale certificate.**

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

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

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

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

372 2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150
 373 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of \$125, for an
 374 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,
 375 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the
 376 requester. Only one fee shall be charged for the preparation and delivery of the resale certificate;

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

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

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

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

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

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

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

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

412 E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are
 413 not collected at settlement and disbursed to the unit owners' association or the common interest
 414 community manager, all fees, including those costs that would have otherwise been the responsibility of
 415 the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale
 416 certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment
 417 against the unit and collectible as any other assessment in accordance with the provisions of the
 418 condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash,
 419 check, certified funds, or credit card, if credit card payment is an option offered by the unit owners'
 420 association. The unit owners' association shall pay the common interest community manager the amount
 421 due from the unit owner within 30 days after invoice.

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

426 G. If a resale certificate has been issued within the preceding 12-month period, a person specified in
 427 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

571 I. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that its
 572 merger into another common interest community manager is desirable for the protection of the
 573 associations to which such common interest community manager provides management services, and (c)
 574 that an emergency exists and (ii) the board of directors of such insolvent common interest community
 575 manager approves a plan of merger of such common interest community manager into another common
 576 interest community manager, then compliance with the requirements of § 13.1-718 shall be dispensed
 577 with as to such insolvent common interest community manager and the approval by the court of such
 578 plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the
 579 outstanding shares of such insolvent common interest community manager for all purposes of Article 12
 580 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1.

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

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

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

607 **§ 55-509.3. Association charges.**

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

613 manager to charge an inspection fee for an unimproved or improved lot except as provided in
 614 § 55-509.6 or 55-509.7. The Common Interest Community Board may assess a monetary penalty for a
 615 violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest
 616 community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator
 617 pursuant to § 54.1-2349 or 54.1-2352, as applicable.

618 **§ 55-509.6. Fees for disclosure packet; professionally managed associations.**

619 A. A professionally managed association or its common interest community manager may charge
 620 certain fees as authorized by this section for the inspection of the property, the preparation and issuance
 621 of the disclosure packet required by § 55-509.5, and for such other services as set out in this section.
 622 The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be
 623 delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and
 624 shall specify the complete contact information for the parties to whom the disclosure packet shall be
 625 delivered.

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

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

629 2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150
 630 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an
 631 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,
 632 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the
 633 requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the
 634 designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure
 635 packet;

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

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

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

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

647 Except as otherwise provided in subsection E, neither the association nor its common interest
 648 community manager shall require cash, check, certified funds or credit card payments at the time the
 649 request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the
 650 disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the
 651 lot and collectible as any other assessment in accordance with the provisions of the declaration and
 652 § 55-516, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever
 653 occurs first.

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

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

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

672 E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or funds are
 673 not collected at settlement and disbursed to the association or the common interest community manager,

674 all fees, including those costs that would have otherwise been the responsibility of the purchaser or
675 settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the
676 lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and
677 collectible as any other assessment in accordance with the provisions of the declaration and § 55-516.
678 The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment
679 is an option offered by the association. The association shall pay the common interest community
680 manager the amount due from the lot owner within 30 days after invoice.

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

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

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

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

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

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

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

728 M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the
729 association disclosure packet within 14 days against any (i) property owners' association pursuant to
730 § 54.1-2351 or (ii) common interest community manager pursuant to ~~§ 54.1-2349~~ and regulations
731 promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as
732 applicable.

733 N. No association may collect fees authorized by this section unless the association (i) is registered
734 with the Common Interest Community Board, (ii) is current in filing the most recent annual report with
735 the Common Interest Community Board, (iii) is current in paying the annual payment to the Common

736 Interest Community Board pursuant to § 55-516.1 and any assessment made by the Common Interest
 737 Community Board pursuant to § 55-530.1, and (iv) provides the disclosure packet electronically if so
 738 requested by the requester.

739 **§ 55-516.3. Protection of the interests of associations; appointment of receiver for common interest**
 740 **community manager.**

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

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

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

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

795 E. The court shall describe the powers and duties of the receiver in its appointing order, which may
 796 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

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

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

869 **§ 55-528. Definitions.**

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

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

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

876 "Board" means the Common Interest Community Board.

877 "Claimant" means upon proper application to the Director, a receiver for a common interest
 878 community manager appointed pursuant to § ~~54-1-2353~~ 55-79.104 or 55-516.3 in those cases in which
 879 there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary
 880 capacity by the subject common interest community manager or to pay an award of reasonable fees,
 881 costs, and expenses to the receiver.

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

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

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

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

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

902 **§ 55-529. Common Interest Community Management Information Fund.**

903 There is hereby created the Common Interest Community Management Information Fund to be used
 904 in the discretion of the Board to promote the improvement and more efficient operation of common
 905 interest communities through research and education. The Fund shall consist of money paid into it
 906 pursuant to §§ ~~54-1-2349~~, 55-79.93:1, 55-504.1, and 55-516.1. The Fund shall be established on the
 907 books of the Comptroller, and any funds remaining in such Fund at the end of the biennium shall not
 908 revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be
 909 transferred to the Common Interest Community Management Recovery Fund established pursuant to
 910 § 55-530.1. Interest earned on the Fund shall be credited to the Fund.

911 **§ 55-530.1. Common Interest Community Management Recovery Fund.**

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

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

918 All assessments, except initial assessments, for the Fund shall be deposited within three business days
 919 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

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

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

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

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

997 7. Upon payment by the Director to a claimant from the fund as provided in this subsection, the
 998 Board shall immediately revoke the license of the common interest community manager whose actions
 999 resulted in payment from the fund. The common interest community manager whose license was so
 1000 revoked shall not be eligible to apply for a license as a common interest community manager until he
 1001 has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of
 1002 interest from the date of payment from the fund.

1003 8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary
 1004 action against any common interest community manager for any violation of statute or regulation, nor
 1005 shall the repayment in full by a common interest community manager of the amount paid from the fund
 1006 on such common interest community manager's account nullify or modify the effect of any disciplinary
 1007 proceeding against such common interest community manager for any such violation.

1008 2. That Article 5 (§§ 54.1-1144, 54.1-1145, and 54.1-1146) of Chapter 11 of Title 54.1, Article 3
 1009 (§§ 54.1-1506 through 54.1-1509) of Chapter 15 of Title 54.1, and §§ 54.1-2346, 54.1-2347, and
 1010 54.1-2353 of the Code of Virginia are repealed.

1011 3. That the terms of persons serving as licensed optician members or the ophthalmologist member
 1012 of the Board for Hearing Aid Specialists and Opticians pursuant to § 54.1-1500.1 of the Code of
 1013 Virginia as it was in effect prior to the effective date of this act shall expire on the effective date
 1014 of this act.

1015 4. That the term of any citizen member of the Board for Hearing Aid Specialists and Opticians
 1016 serving a term that is set to expire on June 30, 2020, shall expire on the effective date of this act.