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HOUSE BILL NO. 2385

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 55-79.97 and 55-509.4 of the Code of Virginia, relating to the Condominium Act and Property Owners' Association Act; delivery of condominium resale certificates and association disclosure packets; right of purchaser to cancel contract.*

Patron—Bulova

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.97 and 55-509.4 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.97. Resale by purchaser; resale certificate; use of for sale sign in connection with resale; designation of authorized representative.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

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

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

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

- a. Hand delivery;
- b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;
- c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or
- d. Overnight delivery using a commercial service or the United States Postal Service.

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

62 A resale certificate shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 D. The seller or the seller's authorized agent may request that the resale certificate be provided in
120 hard copy or in electronic form. A unit owners' association or common interest community manager may

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

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

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

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs;
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

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

H. For purposes of this chapter:

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

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

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

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

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

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

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

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

2. Require any unit owner to execute a formal power of attorney if the unit owner designates a

182 person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and
183 the unit owners' association shall recognize such representation without a formal power of attorney,
184 provided that the unit owners' association is given a written authorization signed by the unit owner
185 designating such representative. Notwithstanding the foregoing, the requirements of § 55-79.77 and the
186 condominium instruments shall be satisfied before any such representative may exercise a vote on behalf
187 of a unit owner as a proxy.

188 **§ 55-509.4. Contract disclosure statement; right of cancellation; use of for sale sign in**
189 **connection with resale; designation of authorized representative.**

190 A. Subject to the provisions of subsection A of § 55-509.10, an owner selling a lot shall disclose in
191 the contract that (i) the lot is located within a development that is subject to the Virginia Property
192 Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the property
193 owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser
194 may cancel the contract within three days after receiving the association disclosure packet or being
195 notified that the association disclosure packet will not be available; (iv) if the purchaser has received the
196 association disclosure packet, the purchaser has a right to request an update of such disclosure packet in
197 accordance with subsection H of § 55-509.6 or subsection D of § 55-509.7, as appropriate; and (v) the
198 right to receive the association disclosure packet and the right to cancel the contract are waived
199 conclusively if not exercised before settlement.

200 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if
201 (a) a current annual report has not been filed by the association with either the State Corporation
202 Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to
203 § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and
204 no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c)
205 written notice has been provided by the association that a packet is not available.

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

208 C. The information contained in the association disclosure packet shall be current as of a date
209 specified on the association disclosure packet prepared in accordance with this section; however, a
210 disclosure packet update or financial update may be requested in accordance with subsection G of
211 § 55-509.6 or subsection D of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i)
212 within three days after the date of the contract, if on or before the date that the purchaser signs the
213 contract, the purchaser receives the association disclosure packet ~~or~~, is notified that the association
214 disclosure packet will not be available, *or receives an association disclosure packet that is not in*
215 *conformity with the provisions of § 55-509.5*; (ii) within three days after receiving the association
216 disclosure packet if the association disclosure packet ~~or~~, notice that the association disclosure packet will
217 not be available, *or an association disclosure packet that is not in conformity with the provisions of*
218 *§ 55-509.5* is hand delivered, delivered by electronic means, or delivered by a commercial overnight
219 delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after
220 the postmark date if the association disclosure packet ~~or~~, notice that the association disclosure packet
221 will not be available, *or an association disclosure packet that is not in conformity with the provisions of*
222 *§ 55-509.5* is sent to the purchaser by United States mail. The purchaser may also cancel the contract at
223 any time prior to settlement if the purchaser has not been notified that the association disclosure packet
224 will not be available and the association disclosure packet is not delivered to the purchaser.

225 Notice of cancellation shall be provided to the lot owner or his agent by one of the following
226 methods:

227 1. Hand delivery;

228 2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which
229 may be either a United States postal certificate of mailing or a certificate of service prepared by the
230 sender confirming such mailing;

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

234 4. Overnight delivery using a commercial service or the United States Postal Service.

235 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of
236 cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be
237 returned promptly to the purchaser.

238 D. Whenever any contract is canceled based on a failure to comply with subsection A or C or
239 pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the
240 cancellation, unless the parties to the contract specify in writing a shorter period.

241 E. Any rights of the purchaser to cancel the contract provided by this chapter are waived
242 conclusively if not exercised prior to settlement.

243 F. Except as expressly provided in this chapter, the provisions of this section and § 55-509.5 may not

be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

G. For purposes of this chapter:

"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.

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

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

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

H. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the disclosure packet may be made by the lot owner or the lot owner's authorized agent.

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

J. Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall:

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

2. Require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.