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SENATE BILL NO. 1449

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend the Code of Virginia by adding in Title 55 a chapter numbered 14.1, consisting of sections numbered 55-252.1 through 55-252.4, relating to the Residential Executory Real Estate Contracts Act.

Patrons—Locke and Mason

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 55 a chapter numbered 14.1, consisting of sections numbered 55-252.1 through 55-252.4, as follows:

CHAPTER 14.1.

RESIDENTIAL EXECUTORY REAL ESTATE CONTRACTS ACT.

§ 55-252.1. Definitions.

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

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice in a form of a certificate of service confirming such mailing prepared by the sender.

"Option payment" means the amount paid by the purchaser in a residential executory real estate contract in exchange for the right to purchase the property that is the subject of such contract at a specific price within a specified time.

"Purchaser" means a person who enters into a residential executory real estate contract.

"Residential executory real estate contract" means an installment land contract, lease option contract, rent-to-own contract, or other real estate contract by which a purchaser (i) acquires any right or interest in real property other than a right of first refusal and (ii) occupies or intends to occupy the property as his primary residence.

"Vendor" means the person who sells, or proposes to sell, real property under a residential executory real estate contract.

§ 55-252.2. Exemptions.

A. The provisions of this chapter shall not apply to residential executory real estate contracts where the vendor is:

1. A natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in the Commonwealth unless the person or entity is an agent, affiliate, subsidiary, or parent company to another legal entity that owns at least one additional residential dwelling unit in the Commonwealth;

2. A real estate licensee pursuant to Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; or

3. A bank, savings institution, credit union, or mortgage lender licensed under Title 6.2.

§ 55-252.3. Provisions applicable to executory real estate contracts.

A. Notwithstanding any other provision of law, an executory real estate contract shall be subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.).

B. Notwithstanding any other provision of law, the following provisions shall be applicable to every executory real estate contract:

1. The purchaser shall have the right to exercise the option at any time before the option expires, and no fee or penalty shall be charged to any purchaser who exercises the option at an earlier time than anticipated under the contract.

2. If the purchaser defaults in the payment of rent or other requirements under a lease, the vendor may serve notice of such default. If default is limited solely to failure to pay rent or other monetary charges, the vendor may terminate the lease and recover possession of the premises only if the delinquent obligation remains outstanding more than 30 days after notice is served upon the purchaser notifying him of (i) the nonpayment, (ii) the amount of the delinquency, and (iii) the vendor's intention to terminate the lease if the default is not timely cured.

3. The vendor may not forfeit the option payment or any portion of such payment, provided, however, that the vendor may apply the option payment (i) to any amounts owed by such purchaser under the executory real estate contract or (ii) as otherwise directed by court order in an interpleader action filed by such vendor pursuant to § 8.01-364 in a court of competent jurisdiction.

4. If the vendor defaults, the purchaser shall be entitled to bring an action in a court of competent

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59 jurisdiction to (i) enjoin further violations; (ii) recover the purchaser's actual damages and, for specific
60 performance of the contract, rescission; or (iii) receive other equitable relief as the court may find
61 appropriate in the interests of justice.

62 5. The prevailing party in any proceeding in a court of competent jurisdiction may be awarded
63 reasonable attorney fees and costs.

64 C. An executory real estate contract may be recorded among the land records in the office of the
65 clerk of circuit court where the real property is located.

66 D. The provisions contained in this section shall not be waived by contract.

67 **§ 55-252.4. Board for Housing and Community Development; development of best practice**
68 **provisions for executory real estate contracts.**

69 The Board for Housing and Community Development shall develop and make available on its
70 website best practice provisions for executory real estate contracts. Such best practice provisions shall
71 include (i) the full names and current mailing addresses of all parties to the contract; (ii) a legal
72 description of the subject premises; (iii) the term of the contract or rental agreement and the amount of
73 periodic payments or rent due; (iv) the most recent assessment of the value of the subject premises by
74 the relevant property tax assessor, as well as the amount of property tax assigned to the property in the
75 year preceding the transaction; (v) a statement disclosing any liens or encumbrances against the subject
76 premises; (vi) the contract sales price for the subject premises, which shall be stated as a precise fixed
77 amount in United States dollars; (vii) a description and the amount of any charges or fees for services
78 that are includable in the contract separate from the contract price; (viii) the amount of any option
79 payment and the deadline by which such option payment is required to be paid; (ix) the residual amount
80 of the contract sales price that is required to be paid after the option payment has been made; (x) the
81 total amount that the purchaser is required to pay in order to complete the purchase of the property
82 under the terms of the contract, including the combined amount of the option, contract sale price, and
83 rent payments coming due over the term of the contract; (xi) the amount that may be paid to extend the
84 option, if any, and the duration of any such extension; and (xii) the notarized signature of each party
85 and date of each signature.