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SENATE BILL NO. 1756

Offered January 18, 2019

A BILL to amend and reenact §§ 55-79.74 and 55-509.2 of the Code of Virginia, relating to the Condominium and Virginia Property Owners' Association Acts; stormwater facilities.

Patron—Surovell

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-79.74 and 55-509.2 of the Code of Virginia are amended and reenacted as follows:****§ 55-79.74. Control of condominium by declarant.**

A. The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association and/or its executive organ, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive organ. The declarant or the managing agent or such other person or persons selected by the declarant to so appoint and remove officers and/or the executive organ or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive organ shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55-79.92 hereof and described pursuant to subdivision (4) of subsection (a), subdivision (2) of subsection (b), or subdivision (8) of subsection (c), of § 55-79.54.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium, three years in the case of a condominium (other than an expandable condominium) containing any convertible land, or two years in the case of any other condominium. Such time period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § 55-79.75 a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive organ and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § 55-79.79 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.

C. If entered into any time prior to the expiration of the period of declarant control, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its

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59 executive organ upon not less than 90 days' written notice to the other party given not later than 60
60 days after the expiration of the period of declarant control. Any such contract or agreement may be
61 renewed for periods not in excess of two years; however, at the end of any two-year period the unit
62 owners' association or its executive organ may terminate any further renewals or extensions thereof. The
63 provisions of this subsection shall not apply to any lease or leases which are referred to in § 55-79.48 or
64 which are subject to subsection (e) of § 55-79.54.

65 D. If entered into at any time prior to the expiration of the period of declarant control, any contract,
66 lease or agreement, other than those subject to the provisions of subsection C, may be entered into by or
67 on behalf of the unit owners' association, its executive organ, or the unit owners as a group, if such
68 contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association
69 at the time entered into under the circumstances.

70 E. This section does not apply to any contract, incidental to the disposition of a condominium unit,
71 to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one
72 year, nursing services, medical services, other health-related services, board and lodging and care as
73 necessary, or any combination of such services. The rule of property law known as the rule restricting
74 unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium
75 instruments requiring that the unit owners be parties to such contracts.

76 F. If the unit owners' association is not in existence or does not have officers at the time of the
77 creation of the condominium, the declarant shall, until there is such an association with such officers,
78 have the power and the responsibility to act in all instances where this chapter requires action by the
79 unit owners' association, its executive organ, or any officer or officers.

80 G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the
81 governing body of the city, county or town in which the condominium is located of the forthcoming
82 termination of declarant control. Prior to the expiration of the 30-day period, the local governing body
83 or an agency designated by the local governing body shall advise the principal elected officer of the
84 condominium unit owners' association of any outstanding violations of applicable building codes, local
85 ordinances or other deficiencies of record.

86 H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver
87 to the president of the unit owners' association or his designated agent (i) all unit owners' association
88 books and records held by or controlled by the declarant including, without limitation, the following
89 items: minute books and all rules, regulations and amendments thereto which may have been
90 promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the
91 condominium instruments to the end of the regular accounting period immediately succeeding the first
92 election of the board of directors by the unit owners not to exceed 60 days from the date of the election,
93 such statement being prepared in an accurate and complete manner, utilizing the accrual method of
94 accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in
95 the project or as-built plans if available; (iv) all association insurance policies ~~which~~ *that* are currently in
96 force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if
97 any; (vi) any contracts in which the association is a contracting party, if any; ~~and~~ (vii) a list of
98 manufacturers of paints, roofing materials, and other similar materials if specified for use on the
99 condominium property; *and (viii) an inventory and description of stormwater facilities located on the*
100 *common elements or which otherwise serve the condominium and for which the unit owners' association*
101 *has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the*
102 *requirements for maintenance thereof.*

103 *The requirement for delivery of stormwater facility information required by clause (viii) shall be*
104 *deemed satisfied by delivery to the association of a final site plan or final construction drawing showing*
105 *stormwater facilities as approved by a local government jurisdiction and applicable recorded easements,*
106 *or agreements if any, containing requirements for the maintenance, repair, or replacement of the*
107 *stormwater facilities.*

108 In the event that the unit owners' association is managed by a management company in which the
109 declarant, or its principals, have no pecuniary interest or management role, then such management
110 company shall have the responsibility to provide the documents and information as required by clauses
111 (i), (ii), (iv), and (vi) of this subsection.

112 I. This section shall be strictly construed to protect the rights of the unit owners.

113 **§ 55-509.2. Documents to be provided by declarant upon transfer of control.**

114 Unless previously provided to the board of directors of the association, once the majority of the
115 members of the board of directors other than the declarant are owners of improved lots in the
116 association and the declarant no longer holds a majority of the votes in the association, the declarant
117 shall provide to the board of directors or its designated agent the following: (i) all association books and
118 records held by or controlled by the declarant, including without limitation, minute books and rules and
119 regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts
120 and expenditures from the date of the recording of the association documents to the end of the regular

accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies ~~which~~ *that* are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements, *including stormwater facilities*; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property; ~~and~~ (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors; *and (xi) an inventory and description of stormwater facilities located on the common area or which otherwise serve the development and for which the association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.*

The requirement for delivery of stormwater facility information required by clause (xi) shall be deemed satisfied by delivery to the association of a final site plan or final construction drawings showing stormwater facilities as approved by a local government jurisdiction and applicable recorded easements or agreements, if any, containing requirements for the maintenance, repair, or replacement of the stormwater facilities.

If the association is managed by a common interest community manager in which the declarant, or its principals, has no pecuniary interest or management role, then such common interest community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), (vi), and (viii).