

20107189D

HOUSE BILL NO. 1340

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 4, 2020)

(Patron Prior to Substitute—Delegate Leftwich)

A BILL to amend and reenact §§ 54.1-2345, 55.1-1602, 55.1-1805, 55.1-1808, 55.1-1810, 55.1-1815, 55.1-1904, 55.1-1906, 55.1-1911, 55.1-1919, 55.1-1937, 55.1-1940, 55.1-1945, and 55.1-1974 of the Code of Virginia, relating to recodification of Title 55; corrections.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2345, 55.1-1602, 55.1-1805, 55.1-1808, 55.1-1810, 55.1-1815, 55.1-1904, 55.1-1906, 55.1-1911, 55.1-1919, 55.1-1937, 55.1-1940, 55.1-1945, and 55.1-1974 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2345. Definitions.

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

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

"Board" means the Common Interest Community Board.

"Common interest community" means real estate subject to a declaration with respect containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses, provided that for the purposes of this chapter only, a common interest community does not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.) or any additional land that is a part of such registration. "Common interest community" does not include an arrangement described in § 54.1-2345.1.

"Common interest community manager" means a person or business entity, including a partnership, association, corporation, or limited liability company, that, for compensation or valuable consideration, provides management services to a common interest community.

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

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

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

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

§ 55.1-1602. Certain covenants of lessee "to pay the rent" and "to pay the taxes."

In a lease, (i) a covenant by the lessee "to pay the rent" shall have the effect of a covenant that the rent reserved by the lease shall be paid to the lessor, or those entitled under the lessor, in the manner stated in the ~~deed~~ lease, and (ii) a covenant by the lessee "to pay the taxes" shall have the effect of a covenant that all the taxes, levies, and assessments upon the demised premises, or upon the lessor on account thereof, shall be paid by the lessee or those claiming under the lessee.

§ 55.1-1805. Association charges.

60 Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no
61 association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the
62 charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to
63 the provisions set out in § 55.1-1810 or 55.1-1811 that is not expressly authorized in those sections.
64 Nothing in this chapter shall be construed to authorize an association or common interest community
65 manager to charge an inspection fee for an unimproved or improved lot except as provided in
66 § 55.1-1810 or 55.1-1811. The Common Interest Community Board may assess a monetary penalty for a
67 violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest
68 community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator
69 pursuant to § 54.1-2349 or 54.1-2352, as applicable.

70 **§ 55.1-1808. Contract disclosure statement; right of cancellation.**

71 A. For purposes of this article, unless the context requires a different meaning:

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

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

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

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

80 B. Subject to the provisions of subsection A of § 55.1-1814, an owner selling a lot shall disclose in
81 the contract that (i) the lot is located within a development that is subject to the Property Owners'
82 Association Act (§ 55.1-1800 et seq.); (ii) the Property Owners' Association Act (§ 55.1-1800 et seq.)
83 requires the seller to obtain from the property owners' association an association disclosure packet and
84 provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving
85 the association disclosure packet or being notified that the association disclosure packet will not be
86 available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to
87 request an update of such disclosure packet in accordance with subsection H or G of § 55.1-1810 or
88 subsection D of § 55.1-1811, as appropriate; and (v) the right to receive the association disclosure packet
89 and the right to cancel the contract are waived conclusively if not exercised before settlement.

90 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if
91 (a) a current annual report has not been filed by the association with either the State Corporation
92 Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-1835,
93 (b) the seller has made a written request to the association that the packet be provided and no such
94 packet has been received within 14 days in accordance with subsection A of § 55.1-1809, or (c) written
95 notice has been provided by the association that a packet is not available.

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

98 D. The information contained in the association disclosure packet shall be current as of a date
99 specified on the association disclosure packet prepared in accordance with this section; however, a
100 disclosure packet update or financial update may be requested in accordance with subsection G or H of
101 § 55.1-1810 or subsection D or E of § 55.1-1811, as appropriate. The purchaser may cancel the contract
102 (i) within three days after the date of the contract if, on or before the date that the purchaser signs the
103 contract, the purchaser receives the association disclosure packet, is notified that the association
104 disclosure packet will not be available, or receives an association disclosure packet that is not in
105 conformity with the provisions of § 55.1-1809; (ii) within three days after receiving the association
106 disclosure packet if the association disclosure packet, notice that the association disclosure packet will
107 not be available, or an association disclosure packet that is not in conformity with the provisions of
108 § 55.1-1809 is hand delivered, delivered by electronic means, or delivered by a commercial overnight
109 delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days
110 after the postmark date if the association disclosure packet, notice that the association disclosure packet
111 will not be available, or an association disclosure packet that is not in conformity with the provisions of
112 § 55.1-1809 is sent to the purchaser by United States mail. The purchaser also may cancel the contract
113 at any time prior to settlement if the purchaser has not been notified that the association disclosure
114 packet will not be available and the association disclosure packet is not delivered to the purchaser.

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

117 1. Hand delivery;

118 2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing in
119 the form of a certificate of service prepared by the sender confirming such mailing;

120 3. Electronic means, provided that the sender retains sufficient proof of the electronic delivery, which
121 may be in the form of 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

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

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

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

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

G. Except as expressly provided in this chapter, the provisions of this section and § 55.1-1809 may not be varied by agreement, and the rights conferred by this section and § 55.1-1809 may not be waived.

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.

§ 55.1-1810. Fees for disclosure packet; professionally managed associations.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55.1-1809, and for such other services as set out in this section. The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

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

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

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

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

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

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

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

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1833, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever occurs first.

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

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and

responsibilities of the association under this chapter. No additional fee shall be charged for access to the association's or common interest community manager's website. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or the seller's authorized agent will know such fees at the time of requesting the packet.

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

E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1834. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

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

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

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

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

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

K. When an association disclosure packet has been delivered as required by § 55.1-1809, the association shall, as to the purchaser, be bound by the statements set forth in the disclosure packet as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55.1-1809, failure to provide the association

disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

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

N. No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report and fee with the Common Interest Community Board pursuant to § 55.1-1835, (iii) is current in paying any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5, and (iv) provides the disclosure packet electronically if so requested by the requester.

§ 55.1-1815. Access to association records; association meetings; notice.

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person having standing to bring legal action or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55.1-1819;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55.1-1816;

8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records

306 containing information subject to an exclusion under subsection C may be withheld or redacted, and all
307 portions of the books and records that are not so excluded shall be available for examination and
308 copying, provided that the requesting member shall be responsible to the association for paying or
309 reimbursing the association for any reasonable costs incurred by the association in responding to the
310 request for the books and records and review for redaction of the same.

311 E. Prior to providing copies of any books and records to a member in good standing under this
312 section, the association may impose and collect a charge, reflecting the reasonable costs of materials and
313 labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in
314 accordance with a cost schedule adopted by the board of directors in accordance with this subsection.
315 The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members
316 in good standing, and (iii) be provided to such requesting member at the time the request is made.

317 F. Notwithstanding the provisions of subsections B and C, all books and records of the association,
318 including individual salary information for all employees and payments to independent contractors, shall
319 be available for examination and copying upon request by a member of the board of directors in the
320 discharge of his duties as a director.

321 G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least
322 once each year after the formation of the association. The bylaws shall specify an officer or his agent
323 who shall, at least 14 days in advance of any annual or regularly scheduled meeting and at least seven
324 days in advance of any other meeting, send to each member notice of the time, place, and purposes of
325 such meeting. In the event of cancellation of any annual meeting of the association at which directors
326 are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall
327 include a statement that the meeting is scheduled for the purpose of the election of directors.

328 Notice shall be sent by United States mail to all members at the address of their respective lots
329 unless the member has provided to such officer or his agent an address other than the address of the
330 member's lot. In lieu of sending such notice by United States mail, notice may instead be (i) hand
331 delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice
332 was delivered to the member, or (ii) sent to the member by electronic mail, provided that the member
333 has elected to receive such notice by electronic mail and, in the event that such electronic mail is
334 returned as undeliverable, notice is subsequently sent by United States mail. Except as provided in
335 subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (a)
336 within 60 days from the conclusion of the meeting to which such minutes appertain or (b) when such
337 minutes are distributed to board members as part of an agenda package for the next meeting of the
338 board of directors, whichever occurs first.

339 **§ 55.1-1904. Association charges.**

340 Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise
341 provided by law, no unit owners' association may make an assessment or impose a charge against a unit
342 owner unless the charge is (i) authorized under § 55.1-1964, (ii) a fee for services provided, or (iii)
343 related to the provisions set out in § 55.1-1992. The Common Interest Community Board may assess a
344 monetary penalty for a violation of this section against any (a) unit owners' association pursuant to
345 § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349 and may issue a cease
346 and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

347 **§ 55.1-1906. Eminent domain.**

348 A. If any portion of the common elements is taken by eminent domain, the award for such taking
349 shall be paid to the unit owners' association, provided, however, that the portion of the award
350 attributable to the taking of any permanently assigned limited common element shall be allocated by the
351 order to the unit owner of the unit to which that limited common element was so assigned at the time of
352 the taking. If that limited common element was permanently assigned to more than one unit at the time
353 of the taking, then the portion of the award attributable to the taking of such limited common element
354 shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such
355 other shares as the condominium instruments may specify for this express purpose. A permanently
356 assigned limited common element is a limited common element that cannot be reassigned or that can be
357 reassigned only with the consent of the unit owner of the unit to which it is assigned in accordance with
358 § 55.1-1919.

359 B. If one or more units are taken by eminent domain, the undivided interest in the common elements
360 appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them
361 in proportion to their respective undivided interests in the common elements. The court shall enter an
362 order reflecting the reallocation of undivided interests produced by such taking, and the award shall
363 include just compensation to the unit owner of any unit taken for his undivided interest in the common
364 elements as well as for his unit.

365 C. 1. If portions of any unit are taken by eminent domain, the court shall determine the fair market
366 value of the portions of such unit not taken, and the undivided interest in the common elements
367 appertaining to any such units shall be reduced, in the case of each such unit, in proportion to the

diminution in the fair market value of such unit resulting from the taking.

2. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with subdivision 1.

3. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested by operation of subdivision 1 and not revested by operation of subdivision 2, as well as for that portion of his unit taken by eminent domain.

D. If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of such unit for his entire undivided interest in the common elements and for his entire unit.

E. Votes in the unit owners' association, rights to future common ~~profits~~ *surpluses*, and liabilities for future common expenses not specially assessed, appertaining to any unit taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association had been reduced in proportion to the reduction in their undivided interests in the common elements, and the order of the court shall provide accordingly.

F. The order of the court shall require the recordation of such order among the land records of the county or city in which the condominium is located.

§ 55.1-1911. Recordation of condominium instruments.

All ~~amendments and certifications of condominium instruments shall set forth the name of the county or city in which the condominium is located and the deed book and page number where the first page of the declaration is recorded.~~ All condominium instruments and all amendments and certifications of such condominium instruments shall be recorded in every county and city in which any portion of the condominium is located. The condominium instruments, amendments, and certifications shall set forth *the county or city in which the condominium is located*, the name of the condominium, and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk.

§ 55.1-1919. Assignments of limited common elements; conversion to common element.

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected by such amendment as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer as the condominium instruments may specify. The officer to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by ~~all~~ *all* of the unit owners concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only pursuant to subdivision A 6 of § 55.1-1916. The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by ~~all~~ *all* of the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded, and the recordation of such amendment shall be conclusive

429 evidence that the method prescribed pursuant to subdivision A 6 of § 55.1-1916 was adhered to. A copy
430 of the amendment shall be delivered to the unit owners of the units concerned. If executed by the
431 declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not
432 prepared by an officer of the unit owners' association.

433 D. If the declarant does not prepare and record an amendment to the declaration to effect the
434 assignment of common elements as limited common elements in accordance with rights reserved in the
435 condominium instruments, but has reflected an intention to make such assignments in deeds conveying
436 units, then the principal officer of the unit owners' association may prepare, execute, and record such an
437 amendment at any time after the declarant ceases to be a unit owner.

438 E. The declarant may unilaterally record an amendment to the declaration converting a limited
439 common element appurtenant to a unit owned by the declarant into a common element as long as the
440 declarant continues to own the unit.

441 **§ 55.1-1937. Termination of condominium.**

442 A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the
443 condominium. An instrument terminating a condominium signed by the declarant is effective upon
444 recordation of such instrument. But this section shall not be construed to nullify, limit, or otherwise
445 affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the
446 right hereby conferred.

447 B. Except in the case of a taking of all the units by eminent domain, if any of the units in the
448 condominium is restricted exclusively to residential use and there is any unit owner other than the
449 declarant, the condominium may be terminated only by the agreement of unit owners of units to which
450 four-fifths of the votes in the unit owners' association appertain, or such larger majority as the
451 condominium instruments may specify. If none of the units in the condominium is restricted exclusively
452 to residential use, the condominium instruments may specify a majority smaller than the minimum
453 specified in this subsection.

454 C. Agreement of the required majority of unit owners to termination of the condominium shall be
455 evidenced by their execution of a termination agreement, or ratifications of such agreement, and such
456 agreement is effective when a copy of the termination agreement is recorded together with a
457 certification, signed by the principal officer of the unit owners' association or by such other officer as
458 the condominium instruments may specify, that the requisite majority of the unit owners signed the
459 termination agreement or ratifications. Unless the termination agreement otherwise provides, prior to
460 recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium
461 may be revoked only with the approval of unit owners of units to which a majority of the votes in the
462 unit owners' association appertain. The termination agreement shall specify a date after which the
463 termination agreement is void if the termination agreement is not recorded. For the purposes of this
464 section, an instrument terminating a condominium and any ratification of such instrument shall be
465 deemed a condominium instrument subject to the provisions of § 55.1-1911.

466 D. In the case of a condominium that contains only units having horizontal boundaries described in
467 the condominium instruments, a termination agreement may provide that all of the common elements
468 and units of the condominium shall be sold following termination. If, pursuant to the termination
469 agreement, any property in the condominium is sold following termination, the termination agreement
470 shall set forth the minimum terms of the sale.

471 E. In the case of a condominium that contains any units not having horizontal boundaries described
472 in the condominium instruments, a termination agreement may provide for sale of the common elements.
473 The termination agreement may not require that the units be sold following termination, unless the
474 condominium instruments as originally recorded provide otherwise or all the unit owners consent to the
475 sale. In the case of a master condominium that contains a unit that is a part of another condominium, a
476 termination agreement for the master condominium shall not terminate the other condominium.

477 F. On behalf of the unit owners, the unit owners' association may contract for the disposition of
478 property in the condominium, but the contract shall not be binding on the unit owners until approved
479 pursuant to subsections B and C. If the termination agreement requires that any property in the
480 condominium be sold following termination, title to the property, upon termination, shall vest in the unit
481 owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners'
482 association shall have powers necessary and appropriate to effect the sale. Until the termination has been
483 concluded and the proceeds have been distributed, the unit owners' association shall continue in
484 existence with all the powers the unit owners' association had before termination. Proceeds of the sale
485 shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the
486 respective interests of the unit owners as provided in subsection I. Unless otherwise specified in the
487 termination agreement, for as long as the unit owners' association holds title to the property, each unit
488 owner or his successor in interest shall have an exclusive right to occupancy of the portion of the
489 property that formerly constituted his unit. During the period of occupancy by the unit owner or his
490 successor in interest, each unit owner or his successor in interest shall remain liable for any assessment

or other obligation imposed on the unit owner by this chapter or the condominium instruments.

G. If the property that constitutes the condominium is not sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 2, the respective interests of the unit owners shall be the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which one quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

2. If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value of such unit or limited common element before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

J. Except as provided in subsection K, foreclosure of any mortgage, deed of trust, or other lien, or enforcement of a lien or encumbrance against the entire condominium, shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

~~L. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.~~

§ 55.1-1940. Bylaws to be recorded with declaration; contents; unit owners' association; executive board; amendment of bylaws.

A. Bylaws providing for governance of the condominium by an association of all of the unit owners shall be recorded simultaneously with the declaration. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive board. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the board and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive board shall be filled by a vote of a majority of the remaining members of the executive board at a meeting of the executive board, even though the members of the executive board present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such board, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of § 55.1-1915.

D. In any case where an amendment to the declaration is required by subsection B, C, or D of § 55.1-1918, the person required to execute such amendment shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § 55.1-1920 or shall abolish the votes appertaining to former units, as appropriate. The amendment to the bylaws shall also reallocate rights to future common ~~profits~~ *surpluses*, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the amendment.

§ 55.1-1945. Books, minutes, and records; inspection.

A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person ~~having standing to bring legal action~~ or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § 55.1-1949;
8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or

9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, not to exceed the reasonable costs of materials and labor, incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive

board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

§ 55.1-1974. Limitations on dispositions of units.

Unless exempt by § 55.1-1972:

1. No declarant may offer or dispose of any interest in a condominium unit located in the Commonwealth, nor offer or dispose of in the Commonwealth any interest in a condominium unit located outside of the Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within five calendar days from the contract date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice of such cancellation hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12-point type.

4. The prospective purchaser may cancel *a nonbinding reservation agreement* by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest in such unit. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this section, nor shall any such provision be a part of any ancillary agreement.