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HOUSE BILL NO. 1548

Offered January 10, 2020

A *BILL to amend and reenact § 55.1-1937 of the Code of Virginia, relating to common interest communities; Virginia Condominium Act; termination of condominium; respective interests of unit owners.*

Patron—Simon

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 55.1-1937 of the Code of Virginia is amended and reenacted as follows:****§ 55.1-1937. Termination of condominium.**

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

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

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

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

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

F. On behalf of the unit owners, the unit owners' association may contract for the disposition of property in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections B and C. If the termination agreement requires that any property in the condominium be sold following termination, title to the property, upon termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the termination has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of the unit owners share of the proceeds of sale paid to each unit owner as provided in subsection I. Unless otherwise specified in the termination agreement, for as long as the unit owners'

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59 association holds title to the property, each unit owner or his successor in interest shall have an
60 exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the
61 period of occupancy by the unit owner or his successor in interest, each unit owner or his successor in
62 interest shall remain liable for any assessment or other obligation imposed on the unit owner by this
63 chapter or the condominium instruments.

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

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

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

81 1. Except as provided in subdivision 2 *and unless otherwise provided by the vote of the members*, the
82 *respective share of the proceeds of sale paid to each unit owner shall equal the percentage of the*
83 *common element* interests of ~~the each unit owners~~ shall be the fair market values of their units, limited
84 ~~common elements~~, and common element interests immediately before the termination, as determined by
85 ~~one or more independent appraisers selected by the unit owners' association~~. The decision of the
86 independent appraisers shall be distributed to the unit owners and become final unless disapproved
87 within 30 days after distribution by unit owners of units to which one quarter of the votes in the unit
88 owners' association appertain. The proportion of any unit owner's interest to the interest of all unit
89 owners is determined by dividing the fair market value of that unit owner's unit and common element
90 interest by the total fair market values of all the units and their common element interests owner. *It*
91 *shall be the responsibility of each unit owner to satisfy and cause the release of any deeds of trust,*
92 *judgment, or lease encumbering such unit prior to or simultaneously with the sale of the condominium.*

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

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

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

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