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HOUSE BILL NO. 176

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 12, 2020)

(Patron Prior to Substitute—Delegate Simon)

A BILL to amend and reenact §§ 55.1-1808 and 55.1-1990 of the Code of Virginia, relating to Property Owners' Association Act and Virginia Condominium Act; contract disclosure statement; extension of right of cancellation.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1808 and 55.1-1990 of the Code of Virginia are amended and reenacted as follows:

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

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

"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.

"Ratified real estate contract" includes any addendum to such contract.

"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.

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

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

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

D. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection G of § 55.1-1810 or subsection D of § 55.1-1811, as appropriate. The purchaser may cancel the contract (i) within three days, *or up to seven days if extended by the ratified real estate contract*, after the date of the contract if, on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet, is notified that the association disclosure packet will not be available, or receives an association disclosure packet that is not in conformity with the provisions of § 55.1-1809; (ii) within three days, *or up to seven days if extended by the ratified real estate contract*, after receiving the association disclosure packet if the association disclosure packet, notice that the association disclosure packet will not be available, or an association disclosure packet that is not in conformity with the provisions of § 55.1-1809 is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days, *or up to 10 days if extended by the ratified real estate contract*, after the postmark date if the association disclosure packet, notice that the association disclosure packet will not be available, or an association disclosure packet that is not in conformity with the provisions of § 55.1-1809 is sent to the purchaser by United States mail. The purchaser also may cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser.

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

62 1. Hand delivery;

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

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

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

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

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

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

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

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

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

87 **§ 55.1-1990. Resale by purchaser; contract disclosure; right of cancellation.**

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

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

91 "Financial update" means an update of the financial information referenced in subdivisions A 2
92 through 7 of § 55.1-1991.

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

95 "*Ratified real estate contract*" includes any addendum to such contract.

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

98 "Resale certificate update" means an update of the financial information referenced in subdivisions A
99 2 through 9 and 12 of § 55.1-1991. The update shall include a copy of the original resale certificate.

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

102 B. In the event of any resale of a condominium unit by a unit owner other than the declarant, and
103 subject to the provisions of subsection F and subsection A of § 55.1-1972, the unit owner shall disclose
104 in the contract that (i) the unit is located within a development that is subject to the Condominium Act;
105 (ii) the Condominium Act requires the seller to obtain from the unit owners' association a resale
106 certificate and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days,
107 *or up to seven days if extended by the ratified real estate contract*, after receiving the resale certificate
108 or being notified that the resale certificate will not be available; (iv) if the purchaser has received the
109 resale certificate, the purchaser has a right to request a resale certificate update or financial update in
110 accordance with § 55.1-1992, as appropriate; and (v) the right to receive the resale certificate and the
111 right to cancel the contract are waived conclusively if not exercised before settlement.

112 For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current
113 annual report has not been filed by the unit owners' association with either the State Corporation
114 Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-1980,
115 (b) the seller has made a written request to the unit owners' association that the resale certificate be
116 provided and no such resale certificate has been received within 14 days in accordance with subsection
117 C of § 55.1-1991, or (c) written notice has been provided by the unit owners' association that a resale
118 certificate is not available.

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

121 D. 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 § 55.1-1992, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, *or up to seven days if extended by the ratified real estate contract*, if on or before the date that the purchaser signs the contract, the purchaser receives the resale certificate, is notified that the resale certificate will not be available, 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, *or up to seven days if extended by the ratified real estate contract*, after receiving the resale certificate if the resale certificate, 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 is obtained; or (iii) within six days, *or up to 10 days if extended by the ratified real estate contract*, after the postmark date if the resale certificate, 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:

1. Hand delivery;
2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing in the form of a certificate of service prepared by the sender confirming such mailing;
3. Electronic means, provided that 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
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 unit owner shall cause any deposit to be returned promptly to the purchaser.