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HOUSE BILL NO. 1816

Offered January 13, 2021

Prefiled January 6, 2021

A BILL to amend and reenact §§ 55.1-1800, 55.1-1815, 55.1-1816, 55.1-1832, 55.1-1900, 55.1-1935, 55.1-1949, 55.1-1952, and 55.1-1953 of the Code of Virginia, relating to the Property Owners' Association Act; the Condominium Act; use of electronic means for meetings and voting.

Patrons—Bulova, Convors-Fowler, Carr, Cole, M.L., Hurst, Kory, Murphy and Tyler

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1800, 55.1-1815, 55.1-1816, 55.1-1832, 55.1-1900, 55.1-1935, 55.1-1949, 55.1-1952, and 55.1-1953 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1800. Definitions.

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

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association or a committee that is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement, or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.

"Common interest community" means the same as that term is defined in § 54.1-2345.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services 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. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

"Development" means real property located within the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through 9 of § 55.1-1809. The update shall include a copy of the original disclosure packet.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. *A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods.* Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-1809.

"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 if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located.

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59 "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

60 "Professionally managed" means a common interest community that has engaged (i) a common
61 interest community manager to provide management services to the community or (ii) a person as an
62 employee for compensation to provide management services to the community, other than a resident of
63 the community who provides bookkeeping, billing, or recordkeeping services for that community.

64 "Property owners' association" or "association" means an incorporated or unincorporated entity upon
65 which responsibilities are imposed and to which authority is granted in the declaration.

66 "Settlement agent" means the same as that term is defined in § 55.1-1000.

67 **§ 55.1-1815. Access to association records; association meetings; notice.**

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

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

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

77 2. The actual salary of the six highest compensated employees of the association earning over
78 \$75,000 and aggregate salary information of all other employees of the association; however, individual
79 salary information shall not be available for examination and copying during the declarant control
80 period.

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

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

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

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

92 3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those
93 instances where there has been a specific threat of litigation from a person or the legal counsel of such
94 person;

95 4. Matters involving state or local administrative or other formal proceedings before a government
96 tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to
97 § 55.1-1819;

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

100 6. Disclosure of information in violation of law;

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

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

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

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

116 E. Prior to providing copies of any books and records to a member in good standing under this
117 section, the association may impose and collect a charge, reflecting the reasonable costs of materials and
118 labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in
119 accordance with a cost schedule adopted by the board of directors in accordance with this subsection.
120 The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members

in good standing, and (iii) be provided to such requesting member at the time the request is made.

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

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

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

H. Unless expressly prohibited by the governing documents, a member may vote at a meeting of the association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the board of directors has adopted guidelines for such voting by electronic means. Members voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

§ 55.1-1816. Meetings of the board of directors.

A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

Any member may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two members of the board of directors shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any member of the board of directors participating in the meeting who is not physically present.

182 Except for the election of officers, voting by secret or written ballot in an open meeting shall be a
183 violation of this chapter.

184 C. The board of directors or any subcommittee or other committee of the board of directors may (i)
185 convene in executive session to consider personnel matters; (ii) consult with legal counsel; (iii) discuss
186 and consider contracts, pending or probable litigation, and matters involving violations of the declaration
187 or rules and regulations adopted pursuant to such declaration for which a member or his family
188 members, tenants, guests, or other invitees are responsible; or (iv) discuss and consider the personal
189 liability of members to the association, upon the affirmative vote in an open meeting to assemble in
190 executive session. The motion shall state specifically the purpose for the executive session. Reference to
191 the motion and the stated purpose for the executive session shall be included in the minutes. The board
192 of directors shall restrict the consideration of matters during such portions of meetings to only those
193 purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted,
194 passed, or agreed to in executive session shall become effective unless the board of directors or
195 subcommittee or other committee of the board of directors, following the executive session, reconvenes
196 in open meeting and takes a vote on such contract, motion, or other action, which shall have its
197 substance reasonably identified in the open meeting. The requirements of this section shall not require
198 the disclosure of information in violation of law.

199 D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide
200 a designated period of time during a *each* meeting to allow members an opportunity to comment on any
201 matter relating to the association. During a meeting at which the agenda is limited to specific topics or
202 at a special meeting, the board of directors may limit the comments of members to the topics listed on
203 the meeting agenda.

204 **§ 55.1-1832. Use of technology.**

205 A. Unless *expressly prohibited* by the declaration ~~expressly provides otherwise~~, (i) any notice
206 required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained
207 under any declaration or bylaw provision or any provision of this chapter may be accomplished using
208 electronic means.

209 B. The association, the lot owners, and those entitled to occupy a lot may perform any obligation or
210 exercise any right under any declaration or bylaw provision or any provision of this chapter by use of
211 electronic means.

212 C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement
213 for a signature under any declaration or bylaw provision or any provision of this chapter.

214 D. Voting on, consent to, and approval of any matter under any declaration or bylaw provision or
215 any provision of this chapter may be accomplished by electronic means, provided that a record is
216 created as evidence of such vote, consent, or approval and maintained as long as such record would be
217 required to be maintained in nonelectronic form. *If the vote, consent, or approval is required to be*
218 *obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic*
219 *means cannot protect the identity of the voter, another means of voting shall be used.*

220 E. Subject to other provisions of law, no action required or permitted by any declaration or bylaw
221 provision or any provision of this chapter need be acknowledged before a notary public if the identity
222 and signature of such person can otherwise be authenticated to the satisfaction of the ~~executive~~ board of
223 directors.

224 F. *Any meeting of the association, the board of directors, or any committee may be held entirely or*
225 *partially by electronic means, provided that the board of directors has adopted guidelines for the use of*
226 *electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings*
227 *are authorized to do so and that persons entitled to participate in such meetings have an opportunity to*
228 *do so. The board of directors shall determine whether any such meeting may be held entirely or*
229 *partially by electronic means.*

230 G. If any person does not have the capability or desire to conduct business using electronic means,
231 the association shall make *available a reasonable accommodation alternative*, at its expense, for such
232 person to conduct business with the association without use of such electronic means.

233 ~~G. H.~~ This section shall not apply to any notice related to an enforcement action by the association,
234 an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

235 **§ 55.1-1900. Definitions.**

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

237 "Capital components" means those items, whether or not a part of the common elements, for which
238 the unit owners' association has the obligation for repair, replacement, or restoration and for which the
239 executive board determines funding is necessary.

240 "Common elements" means all portions of the condominium other than the units.

241 "Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit
242 owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves
243 pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents to or interests in such real property, lawfully subject to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" means, collectively, the declaration, bylaws, and plats and plans recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification recorded with a condominium instrument shall be deemed an integral part of that condominium instrument. Once recorded, any amendment or certification of any condominium instrument shall be deemed an integral part of the affected condominium instrument if such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit.

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium.

"Conversion condominium" means a condominium containing structures that before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a portion of the common elements within which additional units or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium that a declarant may convert into one or more units or common elements, including limited common elements, in accordance with the provisions of the declaration and this chapter.

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of its interest in a condominium unit not previously disposed of, including an institutional lender that may not have succeeded to or accepted any special declarant rights pursuant to § 55.1-1947; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), "declarant" does not include an institutional lender that acquires title by foreclosure or deed in lieu of foreclosure unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55.1-1947. "Declarant" does not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but does not include the transfer or release of security for a debt.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. *A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods.* Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act has the meaning set forth in that section.

"Executive board" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and this chapter.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner

owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest in such land, within which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser that is in no way binding on the prospective purchaser and that may be canceled without penalty at the sole discretion of the prospective purchaser.

"Offer" means any inducement, solicitation, or attempt to encourage any person to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing that expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered shall be considered an "offer."

"Officer" means any member of the executive board or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value may be considered substantially identical within the meaning of §§ 55.1-1917 and 55.1-1918.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person, other than a declarant, that acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

"Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the plat and plans and rounded to the nearest whole number. Certain spaces within the units, including attic, basement, or garage space, may be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both; (iv) appoint or remove any officers of the unit owners' association or the executive board pursuant to subsection A of § 55.1-1943; (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer, or the executive board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § 55.1-1929.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection D of § 55.1-1925.

"Unit owner" means one or more persons that own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest in the condominium extends for the entire balance of the unexpired term. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person holding an interest in a condominium unit solely as security for a debt.

§ 55.1-1935. Use of technology.

A. Unless expressly prohibited by the condominium instruments expressly provide otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using electronic means.

B. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any condominium instrument or any provision of this chapter.

D. Voting, consent to, and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic means provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. *If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.*

E. Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive board.

F. *Any meeting of the unit owners' association, the executive board, or any committee may be held entirely or partially by electronic means, provided that the executive board has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The executive board shall determine whether any such meeting may be held entirely or partially by electronic means.*

G. If any person does not have the capability or desire to conduct business using electronic means, the unit owners' association shall make *available a reasonable accommodation alternative*, at its expense, for such person to conduct business with the unit owners' association without use of such electronic means.

H. This section shall not apply to any notice related to an enforcement action by the unit owners' association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

§ 55.1-1949. Meetings of unit owners' association and executive board.

A. 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

2. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units, unless the unit owner has provided to such officer or his agent an address other than the address of the unit, or notice may be hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

3. In lieu of delivering notice as specified in subdivision 2, such officer or his agent may, ~~to the extent that the condominium instruments or the condominium's rules and regulations expressly provide,~~ send notice by electronic means if consented to by the unit owner to whom the notice is given, provided that the officer or his agent certifies in writing that notice was sent *and, if such electronic mail was returned as undeliverable, notice was subsequently sent by United States mail.*

B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. ~~The unit owners' association may, to the extent that the condominium instruments or adopted rules expressly provide, send notice by electronic means if consented to by the officer to whom the notice is given.~~ Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or email in the case of meetings of the executive board or (ii) by email in the case of meetings of any subcommittee or other committee of the executive board or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the (i) executive board or any subcommittee or other committee of such board or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

3. Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board.

428 4. Any unit owner may record any portion of a meeting required to be open. The executive board or
429 subcommittee or other committee of the executive board conducting the meeting may adopt rules (i)
430 governing the placement and use of equipment necessary for recording a meeting to prevent interference
431 with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the
432 meeting is being recorded.

433 If a meeting of the executive board is conducted by telephone conference or video conference or
434 similar electronic means, at least two board members shall be physically present at the meeting place
435 included in the notice. The audio equipment shall be sufficient for any member in attendance to hear
436 what is said by any board member participating in the meeting who is not physically present.

437 5. Voting by secret or written ballot in an open meeting is a violation of this chapter except for the
438 election of officers.

439 C. The executive board or any subcommittee or other committee of the executive board may convene
440 in executive session to consider personnel matters; consult with legal counsel; discuss and consider
441 contracts, probable or pending litigation, and matters involving violations of the condominium
442 instruments or rules and regulations promulgated pursuant to such condominium instruments for which a
443 unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and
444 consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in
445 an open meeting to assemble in executive session. The motion shall state specifically the purpose for the
446 executive session. Reference to the motion and the stated purpose for the executive session shall be
447 included in the minutes. The executive board shall restrict the consideration of matters during such
448 portions of meetings to only those purposes specifically exempted and stated in the motion. No contract,
449 motion, or other action adopted, passed, or agreed to in executive session shall become effective unless
450 the executive board or subcommittee or other committee of the executive board, following the executive
451 session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which
452 shall have its substance reasonably identified in the open meeting. The requirements of this section do
453 not require the disclosure of information in violation of law.

454 D. Subject to reasonable rules adopted by the executive board, the executive board shall provide a
455 designated period of time during a *each* meeting to allow unit owners an opportunity to comment on
456 any matter relating to the unit owners' association. During a meeting at which the agenda is limited to
457 specific topics or at a special meeting, the executive board may limit the comments of unit owners to
458 the topics listed on the meeting agenda.

459 **§ 55.1-1952. Meetings of unit owners' association and executive board; quorums.**

460 A. Unless the condominium instruments otherwise provide or as specified in subsection G & H of
461 § 55.1-1953, a quorum shall be deemed to be present throughout any meeting of the unit owners'
462 association until adjourned if persons entitled to cast more than one-third of the votes are present at the
463 beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage
464 not less than 10 percent.

465 B. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be
466 present throughout any meeting of the executive board if persons entitled to cast one-half of the votes in
467 that body are present at the beginning of such meeting.

468 C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of
469 the county or city in which the condominium or the greater part of such condominium is located may
470 order an annual meeting of the unit owners' association be held for the purpose of the election of
471 members of the executive board, provided that:

472 1. No annual meeting as required by § 55.1-1949 has been held due to the failure to obtain a quorum
473 of unit owners as specified in the condominium instruments; and

474 2. The unit owners' association has made good faith attempts to convene a duly called annual
475 meeting of the unit owners' association in three successive years, which attempts have proven
476 unsuccessful due to the failure to obtain a quorum.

477 The court may set the quorum for the meeting and enter other orders necessary to convene the
478 meeting.

479 A unit owner filing a petition under this subsection shall provide a copy of the petition to the
480 executive board at least 10 business days prior to filing.

481 **§ 55.1-1953. Meetings of unit owners' association and executive board; voting by unit owners;
482 proxies.**

483 A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A
484 and B of § 55.1-1920 a number of votes in the unit owners' association proportionate to the undivided
485 interest in the common elements appertaining to each such unit.

486 B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit
487 owners' association, subject to the following exception: Each convertible space so depicted shall be
488 allocated a number of votes in the unit owners' association proportionate to the size of each such space,
489 vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners'

association shall be allocated equally to the other units so depicted.

C. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. If more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. For purposes of this subsection, "person" is deemed to include any natural person having authority to execute deeds on behalf of any person, excluding natural persons, that is, either alone or in conjunction with another person, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such unit owners. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Except to the extent otherwise provided in the condominium instruments, any proxy is void if it is not dated, or if it purports to be revocable without the required notice. Any proxy shall be void if not signed by or on behalf of the unit owner. If the unit owner is more than one person, any such unit owner may object to the proxy at or prior to the meeting, whereupon the proxy shall be deemed revoked. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed. ~~To the extent the condominium instruments or the condominium's rules and regulations expressly so provide, a vote or proxy may be submitted by electronic means, provided that any such electronic means shall either set forth or be submitted with information from which it can be determined that the electronic means was authorized by the unit owner or the unit owner's proxy.~~

E. Unless expressly prohibited by the condominium instruments, a unit owner may vote at a meeting of the unit owners' association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the executive board has adopted guidelines for such voting by electronic means. Unit owners voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

F. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

~~F.~~ G. All votes appertaining to units owned by the unit owners' association shall be deemed present for quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in the same proportions as the votes cast by unit owners other than the unit owners' association.

~~G.~~ H. Except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive board pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments.