

23104187D

**HOUSE BILL NO. 2235**

Offered January 11, 2023

Prefiled January 11, 2023

*A BILL to amend and reenact §§ 54.1-2130, 54.1-2345.1, 54.1-2349 through 54.1-2352, 55.1-1800, 55.1-1802, 55.1-1805, 55.1-1816, 55.1-1820, 55.1-1820.1, 55.1-1822, 55.1-1823, 55.1-1904, 55.1-1937, 55.1-1951, 55.1-1951.1, and 55.1-1972 of the Code of Virginia; to amend the Code of Virginia by adding in Title 55.1 a chapter numbered 23.1, consisting of sections numbered 55.1-2307 through 55.1-2317; and to repeal Article 2 (§§ 55.1-1808 through 55.1-1814) of Chapter 18 and Article 5 (§§ 55.1-1990 through 55.1-1995) of Chapter 19 of Title 55.1 of the Code of Virginia, relating to common interest communities; Resale Disclosure Act.*

Patron—Wampler

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-2130, 54.1-2345.1, 54.1-2349 through 54.1-2352, 55.1-1800, 55.1-1802, 55.1-1805, 55.1-1816, 55.1-1820, 55.1-1820.1, 55.1-1822, 55.1-1823, 55.1-1904, 55.1-1937, 55.1-1951, 55.1-1951.1, and 55.1-1972 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 55.1 a chapter numbered 23.1, consisting of sections numbered 55.1-2307 through 55.1-2317, as follows:**

**§ 54.1-2130. Definitions.**

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person as an agent by such person's express authority in a commercial or residential real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135. Any real estate licensee who acts for or represents a client in an agency relationship in a residential real estate transaction shall either represent such client as a standard agent or a limited service agent.

"Agent" means a real estate licensee who is acting as (i) a standard agent in a residential real estate transaction, (ii) a limited service agent in a residential real estate transaction, or (iii) an agent in a commercial real estate transaction.

"Brokerage agreement" means the written agreement creating a brokerage relationship between a client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent the client as an agent or an independent contractor.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

"Client" means a person who has entered into a brokerage relationship with a licensee.

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under § 58.1-3230. Commercial real estate shall not include single family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

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59 "Customer" means a person who has not entered into a brokerage relationship with a licensee but for  
60 whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a  
61 brokerage relationship with such person, it shall be presumed that such person is a customer of the  
62 licensee rather than a client.

63 "Designated agent" or "designated representative" means a licensee who has been assigned by a  
64 principal or supervising broker to represent a client when a different client is also represented by such  
65 principal or broker in the same transaction. A designated representative shall only act as an independent  
66 contractor.

67 "Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both  
68 seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an  
69 agency relationship under brokerage agreements with the clients. A dual representative has an  
70 independent contractor relationship under brokerage agreements with the clients. A dual representative  
71 shall only act as an independent contractor.

72 "Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship  
73 based upon a brokerage agreement that specifically states that the real estate licensee is acting as an  
74 independent contractor and not as an agent; (ii) shall have the obligations agreed to by the parties in the  
75 brokerage agreement; and (iii) shall comply with the provisions of subdivisions A 3 through 7 and  
76 subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132;  
77 subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3  
78 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C  
79 and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135.

80 "Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.).

81 "Limited service agent" means a licensee who acts for or represents a client in a residential real  
82 estate transaction pursuant to a brokerage agreement that provides that the limited service agent will not  
83 provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133,  
84 and 54.1-2134, inclusive. A limited service agent shall have the obligations set out in the brokerage  
85 agreement, except that a limited service agent shall provide the client, at the time of entering the  
86 brokerage agreement, copies of any and all disclosures required by federal or state law, or local  
87 disclosures expressly authorized by state law, and shall disclose to the client the following in writing: (i)  
88 the rights and obligations of the client under the Virginia Residential Property Disclosure Act  
89 (§ 55.1-700 et seq.); (ii) if the client is selling a condominium, the rights and obligations of the client to  
90 deliver to the purchasers, or to receive as purchaser, the ~~condominium~~ resale certificate required by §  
91 ~~55.1-1990~~ 55.1-2309; and (iii) if the client is selling a property subject to the Property Owners'  
92 Association Act (§ 55.1-1800 et seq.), the rights and obligations of the client to deliver to the  
93 purchasers, or to receive as purchaser, the ~~association disclosure packet required by § 55.1-1809~~ resale  
94 certificate required by § 55.1-2309.

95 "Ministerial acts" means those routine acts which a licensee can perform for a person which do not  
96 involve discretion or the exercise of the licensee's own judgment.

97 "Property management agreement" means the written agreement between a property manager and the  
98 owner of real estate for the management of the real estate.

99 "Residential real estate" means real property containing from one to four residential dwelling units  
100 and the sale of lots containing one to four residential dwelling units.

101 "Standard agent" means a licensee who acts for or represents a client in an agency relationship in a  
102 residential real estate transaction. A standard agent shall have the obligations as provided in this article  
103 and any additional obligations agreed to by the parties in the brokerage agreement.

104 **§ 54.1-2345.1. Certain real estate arrangements and covenants not deemed to constitute a**  
105 **common interest community.**

106 A. An arrangement between the associations for two or more common interest communities to share  
107 the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate,  
108 or other activities specified in their arrangement or declarations does not create a separate common  
109 interest community, or an arrangement between an association and the owner of real estate that is not  
110 part of a common interest community to share the costs of real estate taxes, insurance premiums,  
111 services, maintenance, or improvements of real estate, or other activities specified in their arrangement  
112 does not create a separate common interest community. Assessments against the lots in the common  
113 interest community required by such arrangement shall be included in the periodic budget for the  
114 common interest community, and the arrangement shall be disclosed in all required public offering  
115 statements and ~~disclosure packets~~ resale certificates.

116 B. A covenant requiring the owners of separately owned parcels of real estate to share costs or other  
117 obligations associated with a party wall, driveway, well, or other similar use does not create a common  
118 interest community unless the owners otherwise agree to create such community.

119 **§ 54.1-2349. Powers and duties of the Board.**

120 A. The Board shall administer and enforce the provisions of this article. In addition to the provisions

of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this article in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), including the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. Upon application for license and each renewal thereof, the applicant shall pay a fee established by the Board, which shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the Community Association Managers International Certification Board, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this article;

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this article;

8. Issue a certificate of registration to each association that has properly filed in accordance with this chapter; and

9. Develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act (§ 55.1-1800 et seq.).

B. 1. The Board shall have the sole responsibility for the administration of this article and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this article, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this article with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this article or the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), *or the Resale Disclosure Act (§ 55.1-2307 et seq.)*, any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or

upon court order.

D. Notwithstanding the provisions of subsection A of § 54.1-2354.4, the Board may receive a complaint directly from any person aggrieved by an association's failure to deliver a resale certificate or disclosure packet within the time period required under § 55.1-1809, 55.1-1810, 55.1-1811, 55.1-1900, 55.1-1992, or in accordance with § 55.1-2161 or Chapter 23.1 (§ 55.1-2307 et seq.) of Title 55.1.

**§ 54.1-2350. Annual report; form to accompany resale certificates.**

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of Article 2 (§ 54.1-2354.1 et seq.);

2. Develop and disseminate an association annual report form for use in accordance with §§ 55.1-1835, 55.1-1980, and 55.1-2182; and

3. Develop and disseminate a form to accompany resale certificates required issued pursuant to § 55.1-1990 and association disclosure packets required pursuant to § 55.1-1809 55.1-2309, which form shall summarize the unique characteristics of common interest communities generally that may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest community. The form shall include information on the following, which may or may not be applicable to a particular common interest community: (i) the obligation on the part of an owner to pay regular annual or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments; (iii) the purposes for which such assessments, if any, may be used, including for the construction or maintenance of stormwater management facilities; (iv) the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living; (v) limitations on an owner's ability to rent his lot or unit; (vi) limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community; (vii) limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) the period or length of declarant control; and (xi) that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law. The form shall also provide that (a) the purchaser remains responsible for his own examination of the materials that constitute the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b) the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies between the form and the resale certificate or disclosure packet.

**§ 54.1-2351. General powers and duties of Board concerning associations.**

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this article, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this article or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action involving a violation by a declarant or a developer of a time-share project of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this article.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order, the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this article, the Board, without

compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), *the Resale Disclosure Act* (§ 55.1-2307 et seq.), or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than \$1,000 per violation against any governing board that violates any provision of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), *the Resale Disclosure Act* (§ 55.1-2307 et seq.), or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), *the Resale Disclosure Act* (§ 55.1-2307 et seq.), or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

**§ 54.1-2352. Cease and desist orders.**

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this article, if the Board determines after notice and hearing that the governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this article, including engaging in any act or practice in violation of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), *the Resale Disclosure Act* (§ 55.1-2307 et seq.), or any of the Board's regulations or orders;

2. Failed to register as an association or to file an annual report as required by statute or regulation;

3. Materially misrepresented facts in an application for registration or an annual report; or

4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary order to cease and desist or to take such affirmative action as may be deemed appropriate by the Board. Prior to issuing the temporary order, the Board shall give notice of the proposal to issue a temporary order to the person. Every temporary order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

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

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

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

"Resale certificate" means a certificate issued by an association pursuant to §§ 55.1-2309 and 55.1-2310.

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

**§ 55.1-1802. Developer to register and file annual report; payment of real estate taxes attributable to the common area.**

A. Unless control of the association has been transferred to the members, the developer shall register the association with the Common Interest Community Board within 30 days after recordation of the declaration and thereafter shall ensure that the report required pursuant to § 55.1-1835 and any required update has been filed.

B. Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in § 58.1-3284.1 through the date of the transfer to the association.

**§ 55.1-1805. Association charges.**

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55.1-1810 or 55.1-1811 that is not issuance of a resale certificate pursuant to § 55.1-2309 or 55.1-2311 except as expressly authorized in those sections § 55.1-2316. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55.1-1810 or 55.1-1811 55.1-2316. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2352.

**§ 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.

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

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

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

#### **§ 55.1-1820. Display of the flag of the United States; necessary supporting structures; affirmative defense.**

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no association shall prohibit any lot owner from displaying upon property to which the lot owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code (4 U.S.C. § 1 et seq.), or any rule or custom pertaining to the proper display of the flag. The association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property, provided that such restrictions are necessary to protect a substantial interest of the association.

B. The association may restrict the display of such flag in the common areas.

C. In any action brought by the association under § 55.1-1819 for violation of a flag restriction, the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the association.

D. In any action brought by the association under § 55.1-1819, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display

428 of flags or any flagpole or similar structure necessary to display such flags was not contained in the  
429 ~~disclosure packet~~ *resale certificate as required pursuant to by § 55.1-1809 55.1-2310.*

430 **§ 55.1-1820.1. Installation of solar energy collection devices.**

431 A. As used in this section, "solar energy collection device" means any device manufactured and sold  
432 for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive  
433 heating panels or building components and solar photovoltaic apparatus.

434 B. No association shall prohibit an owner from installing a solar energy collection device on that  
435 owner's property unless the recorded declaration for the association establishes such a prohibition.  
436 However, an association may establish reasonable restrictions concerning the size, place, and manner of  
437 placement of such solar energy collection devices on property designated and intended for individual  
438 ownership and use. Any ~~disclosure packet~~ *resale certificate issued pursuant to § 55.1-1809 55.1-2309*  
439 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on  
440 the right of an owner to install or use solar energy collection devices on his property.

441 C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular  
442 proposal (i) increases the cost of installation of the solar energy collection device by five percent over  
443 the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar  
444 energy collection device by 10 percent below the projected energy production of the initially proposed  
445 installation. The owner shall provide documentation prepared by an independent solar panel design  
446 specialist, who is certified by the North American Board of Certified Energy Practitioners and is  
447 licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable  
448 according to the criteria established in this subsection.

449 D. The association may prohibit or restrict the installation of solar energy collection devices on the  
450 common elements or common area within the real estate development served by the association. An  
451 association may establish reasonable restrictions as to the number, size, place, and manner of placement  
452 or installation of any solar energy collection device installed on the common elements or common area.

453 **§ 55.1-1822. Use of for sale signs in connection with sale.**

454 Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law,  
455 no ~~property owners'~~ association shall require the use of any for sale sign that is (i) an association sign or  
456 (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. An  
457 association may, however, prohibit the placement of signs in the common area and establish reasonable  
458 rules and regulations that regulate (a) the number of real estate signs to be located on real property upon  
459 which the owner has a separate ownership interest or a right of exclusive possession, so long as at least  
460 one real estate sign is permitted; (b) the geographical location of real estate signs on real property in  
461 which the owner has a separate ownership interest or a right of exclusive possession, so long as the  
462 location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner  
463 in which real estate signs are affixed to real property; and (d) the period of time after settlement when  
464 the real estate signs on such real property shall be removed.

465 **§ 55.1-1823. Designation of authorized representative.**

466 Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law,  
467 no ~~property owners'~~ association shall require any lot owner to execute a formal power of attorney if the  
468 lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's  
469 authorized representative, and the association shall recognize such representation without a formal power  
470 of attorney, provided that the association is given a written authorization that includes the designated  
471 representative's name, contact information, and license number and the lot owner's signature.  
472 Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act  
473 (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be  
474 satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

475 **§ 55.1-1904. Association charges.**

476 Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise  
477 provided by law, no unit owners' association may make an assessment or impose a charge against a unit  
478 owner unless the charge is (i) authorized under § 55.1-1964, (ii) a fee for services provided, or (iii)  
479 related to the provisions set out in § ~~55.1-1992 55.1-2316~~. The Common Interest Community Board may  
480 assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant  
481 to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349 and may issue a  
482 cease and desist order pursuant to § 54.1-2352.

483 **§ 55.1-1937. Termination of condominium.**

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

489 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. Any unit owner acquiring a unit subsequent to approval of a termination agreement but prior to recordation of the termination agreement shall be deemed to have consented to the termination agreement. Upon approval of a termination agreement and until recordation of the termination agreement, a copy of the termination agreement shall be included with the resale certificate required by § ~~55.1-1990~~ 55.1-2309. 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. A termination agreement may provide that all of the common elements and units of the condominium shall be sold or otherwise disposed of following termination. If, pursuant to the termination agreement, any property in the condominium is sold or disposed of following termination, the termination agreement shall set forth the minimum terms of the sale or disposition.

E. 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 or otherwise disposed of 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 or disposition. 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 as provided in subsection I. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the period that the unit owner or his successor in interest has the right to occupancy, 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 or otherwise disposed of following termination, 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. In such an event, any liens on a unit shall shift accordingly, and a lien may be enforced only against a unit owner's tenancy in common interest, but the lien shall not encumber the entire property formerly constituting the condominium. 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 3, the respective interests of the unit owners shall be as set forth in the termination agreement.

2. Except as provided in subdivision 3, if the respective interests of the unit owners are based on the respective fair market values of their units, limited common elements, and common element interests immediately before the termination, the fair market values shall be 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.

3. If the method of determining the respective interests of the unit owners in the proceeds of sale or disposition is other than the fair market values, then the association shall provide each unit owner with a notice stating the result of that method for his unit and, no later than 30 days after transmission of that notice, if 10 percent of the unit owners dispute the interest to be distributed to their units, those unit owners may require the association to obtain an independent appraisal of the condominium units. If the fair market value of the units of the objecting unit owners is at least 10 percent more than the amount that the unit owners would have received using the method agreed upon by the membership, then the association shall adjust the respective interests of the unit owners so that each unit owner's share is based on the fair market value for each unit. If the fair market value is less than 10 percent more than the amount that the objecting unit owners would have received using the agreed-upon method, then the agreed-upon method shall be implemented and the objecting unit owners shall receive the distribution less their pro rata share of the cost of their appraisal.

4. If the method of determining the respective interests of the unit owners cannot be implemented because any unit or limited common element is destroyed, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

5. Unless the termination agreement provides otherwise, each unit owner shall satisfy and cause the release of any mortgage, deed of trust, lease, or other lien or encumbrance on his unit at the time required by the termination agreement.

J. Except as provided in subsection K, foreclosure of any mortgage, deed of trust, or other lien, or enforcement of a mortgage, deed of trust, or other 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.

**§ 55.1-1951. Display of the flag of the United States; necessary supporting structures; affirmative defense.**

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit owner from displaying upon property to which the unit owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code (4 U.S.C. § 1 et seq.) or any rule or custom pertaining to the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property, provided that such restrictions are necessary to protect a substantial interest of the unit owners' association.

B. The unit owners' association may restrict the display of such flags in the common elements.

C. In any action brought by the unit owners' association under § 55.1-1959 for a violation of a flag restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the unit owners' association.

D. In any action brought by the unit owners' association under § 55.1-1959, the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to the flag of the United States or any flagpole or similar structure necessary to display the flag of the United States was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to § 55.1-1976 or ~~55.1-1991~~ 55.1-2309.

**§ 55.1-1951.1. Installation of solar energy collection devices.**

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No unit owners' association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the unit owners' association establishes such a prohibition. However, a unit owners' association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-1990 55.1-2309 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the unit owners' association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The unit owners' association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the unit owners' association. A unit owners' association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

**§ 55.1-1972. Exemptions from certain provisions of article.**

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 55.1-1974 through 55.1-1979, subsections B and D of § 55.1-1982, and §§ 55.1-1990 and 55.1-1991 55.1-2308 and 55.1-2309 do not apply to:

1. Dispositions pursuant to court order;
2. Dispositions by any government or government agency;
3. Offers by the declarant on nonbinding reservation agreements;
4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or

5. A disposition of a unit by a sale at an auction where a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ 55.1-1974 through 55.1-1983 shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

**CHAPTER 23.1.**

**RESALE DISCLOSURE ACT.**

**§ 55.1-2307. Definitions.**

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

"Agent" means the authorized agent designated by the purchaser or seller in a ratified real estate contract, listing agreement, or other writing designating such agent.

"Association" means an association created pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or a council of co-owners created pursuant to the Horizontal Property Act (§ 55.1-2000 et seq.).

"Board" means the board of directors or executive board, of an association, except that in the case of a horizontal property regime created pursuant to the Horizontal Property Act (§ 55.1-2000 et seq.), "board" means the council of co-owners.

"Common interest community" means a condominium created pursuant to the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Horizontal Property Act (§ 55.1-2000 et seq.), a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or a property owners' association subject to the Property Owners' Association Act (§ 55.1-1800 et seq.).

"Days" means calendar days.

"Governing documents" means, to the extent applicable, the declaration, bylaws, organizing articles, and any other foundational documents of the association and all amendments to such documents.

"Limited elements" means the limited common elements appurtenant to a condominium unit or

674 cooperative unit or the limited common area appurtenant to a lot.

675 "Managing agent" means a licensee who performs management services as defined in § 54.1-2345.

676 "Purchaser" means the person or entity acquiring the unit.

677 "Ratified real estate contract" or "contract" means the contract to purchase the unit and any  
678 addenda to such contract.

679 "Resale certificate" means the information listed in § 55.1-2310.

680 "Rules and regulations" means restrictions or limitations adopted by the board or authorized  
681 committee addressing the use, operation, appearance, or design of a portion of the common interest  
682 community.

683 "Seller" means the person or entity selling the unit.

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

685 "Unit" means a condominium unit in a condominium, a cooperative unit in a real estate cooperative,  
686 or a lot in a community governed by an association.

687 "Updated resale certificate" means an update of the resale certificate referenced in § 55.1-2311.

688 **§ 55.1-2308. Contract for resale; disclosures.**

689 Unless exempt pursuant to § 55.1-2317, any contract for the resale of a unit in a common interest  
690 community shall disclose (i) that the unit is located in a common interest community; (ii) that the seller  
691 is required to obtain from the association a resale certificate and provide it to the purchaser; (iii) in  
692 detail, the purchaser's right to cancel the contract pursuant to § 55.1-2312; (iv) that the purchaser may  
693 request an updated resale certificate pursuant to § 55.1-2311; and (v) that the purchaser's right to  
694 receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised  
695 before settlement. If the contract does not contain the disclosures required by this section, the  
696 purchaser's sole remedy is to cancel the contract prior to settlement.

697 **§ 55.1-2309. Resale certificate; delivery.**

698 A. Unless exempt pursuant to § 55.1-2317, the association, the association's managing agent, or any  
699 third party preparing the resale certificate on behalf of the association shall deliver such resale  
700 certificate within 14 days after a request by a seller or seller's agent.

701 B. The association, association's managing agent, or any third party preparing the resale certificate  
702 on behalf of the association shall deliver the resale certificate to the seller, or to such person as the  
703 seller may direct, either printed or in a generally accepted electronic format as the seller may request.

704 C. The information contained in the resale certificate shall be current as of a date specified on the  
705 resale certificate. The seller or purchaser may request an updated resale certificate as provided in  
706 § 55.1-2311.

707 **§ 55.1-2310. Resale certificate; form and contents.**

708 A. The association shall include a form, developed by the common interest community board  
709 pursuant to § 54.1-2350, with the resale certificate.

710 B. The contents of the resale certificate shall include in the following order:

711 1. The name, address, and phone numbers of the preparer of the resale certificate and any managing  
712 agent of the association;

713 2. A copy of the governing documents and any rules and regulations of the association;

714 3. A statement disclosing any restraint on the alienability of the unit for which the resale certificate  
715 is being issued;

716 4. A statement of the amount and payment schedules of assessments and any unpaid assessments  
717 currently due and payable to the association;

718 5. A statement of any other fees due and payable by an owner of the unit;

719 6. A statement of any other entity or facility to which the owner of the unit being sold may be liable  
720 for assessments, fees, or other charges due to the ownership of the unit;

721 7. A statement of the amount and payment schedule of any approved additional or special assessment  
722 and any unpaid additional or special assessment currently due and payable;

723 8. A statement of any capital expenditures approved by the association for the current and  
724 succeeding fiscal years;

725 9. A statement of the amount of any reserves for capital expenditures and of any portions of those  
726 reserves designated by the association for any specified projects;

727 10. The most recent balance sheet and income and expense statement, if any, of the association;

728 11. The current operating budget of the association;

729 12. The current reserve study, or a summary of such study;

730 13. A statement of any unsatisfied judgments against the association and the nature and status of any  
731 pending actions in which the association is a party and that could have a material impact on the  
732 association, the owners, or the unit being sold;

733 14. A statement describing any insurance coverage provided by the association for the benefit of the  
734 owners, including fidelity coverage, and any insurance coverage recommended or required to be  
735 obtained by the owners;

15. A statement as to whether the board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the unit being sold or to the limited elements assigned thereto violate any provision of the governing documents or rules and regulations together with copies of any notices provided;

16. A statement as to whether the board has received written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the unit being sold, the limited elements assigned thereto, or any other portion of the common interest community that has not been cured;

17. A copy of any approved minutes of meetings of the board held during the last six months;

18. A copy of any approved or draft minutes of the most recent association meeting;

19. A statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal of such leasehold;

20. A statement of any limitation in the governing documents on the number or age of persons who may occupy a unit as a dwelling;

21. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to display the flag of the United States, including reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

22. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on the owner's unit or limited element;

23. A statement setting forth any restriction, limitation or prohibition on the size, placement, or duration of display of political, for sale, or any other signs on the property;

24. A statement identifying any parking or vehicle restriction, limitation, or prohibition in the governing documents or rules and regulations;

25. A statement setting forth any restriction, limitation, or prohibition on the operation of a home-based business that otherwise complies with all applicable local ordinances;

26. A statement setting forth any restriction, limitation, or prohibition on an owner's ability to rent the unit;

27. In a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the owner of real estate taxes and interest paid by the association;

28. A statement describing any pending sale or encumbrance of common elements;

29. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies; and

30. Certification that the association has filed with the Common Interest Community Board the annual report required by law, which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing.

**§ 55.1-2311. Updated resale certificate.**

A. If a resale certificate was issued more than 30 days but less than 12 months before settlement, the seller or the purchaser, upon proof of being the contract purchaser of the unit, may request an updated resale certificate. The updated resale certificate shall be delivered to the person requesting it, or as such person may direct, in the format requested. The updated resale certificate shall be delivered within 10 days after the request.

B. The updated resale certificate shall contain current information for all items that may have changed from the original resale certificate or a statement that there are no changes.

C. A settlement agent authorized by the seller or purchaser may request a financial update and the association shall provide such information within three business days after the request.

**§ 55.1-2312. Cancellation of contract by purchaser.**

A. The purchaser may cancel the contract:

1. Within three days, or up to seven days if extended by the ratified real estate contract, after the ratification date of the contract if the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable on or before the date that the contract is ratified;

2. Within three days, or up to seven days if extended by the ratified real estate contract, from the date the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable if delivery occurs after the contract is ratified; or

3. At any time prior to settlement if the resale certificate is not delivered to the purchaser.

B. Written notice of cancellation shall be provided to the seller in accordance with the terms of the contract. The purchaser shall have the burden to demonstrate delivery of the notice of cancellation.

C. If the unit is governed by more than one association, the timeframe for the purchaser's right of cancellation shall run from the date of delivery of the last resale certificate.

D. Cancellation shall be without penalty, and the seller shall cause any deposit or escrowed funds to be returned promptly to the purchaser.

**§ 55.1-2313. Liability for resale certificate.**

A. A seller providing a resale certificate pursuant to § 55.1-2310 or 55.1-2311 shall not be liable to the purchaser for any erroneous information provided by the association and included in the certificate or for the failure or delay of the association to provide the certificate in a timely manner.

B. A purchaser shall not be liable for any unpaid assessment or fee greater than the amount set forth in the resale certificate or updated resale certificate. The association shall, as to the purchaser, be bound by the information provided in the resale certificate or updated resale certificate as to the amounts of current assessments, including any approved special or additional assessments, and any violation of the governing documents or rules and regulations as of the date of the resale certificate, or updated resale certificate, unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

**§ 55.1-2314. Failure to provide resale certificate; no waiver.**

A. If an association, the association's managing agent, or any third party preparing a resale certificate fails to comply with § 55.1-2310 or 55.1-2311, the purchaser shall not be required to pay any delinquent assessments or remedy any violation of the governing documents or rules and regulations existing as of the date of the resale certificate or updated resale certificate. The association may only enforce a violation incurred by a previous owner against a purchaser if such violation has been properly noted in the most recently issued resale certificate.

B. The purchaser shall abide by the governing documents and rules and regulations as to all matters arising after acquiring the unit regardless of whether such purchaser received a resale certificate.

C. The preparer of the resale certificate or updated resale certificate 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.

D. The Common Interest Community Board may assess a monetary penalty for failure to deliver the resale certificate or updated resale certificate as required against any (i) 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.

**§ 55.1-2315. Properties subject to more than one declaration.**

If the unit is subject to more than one common interest community, each association, the association's managing agent, or any third party preparing a resale certificate on behalf of an association shall provide a resale certificate for that association and may charge the appropriate fees.

**§ 55.1-2316. Resale certificate; fees.**

A. An association may charge fees for preparation, delivery, and expedited delivery of a resale certificate or an updated resale certificate and for the inspection of a unit performed to prepare the resale certificate or updated resale certificate. Unless provided otherwise by the association, the appropriate fees shall be paid when the resale certificate or updated resale certificate is requested. The seller shall be responsible for all fees associated with the preparation and delivery of the resale certificate, including any fees for inspection of the unit. The requesting party shall pay any fees for the preparation and delivery of the updated resale certificate.

B. The Common Interest Community Board shall establish the maximum fees that the association may charge for such preparation, delivery, and inspection; such maximum fees shall be commercially reasonable and consistent with the effort required to comply with the resale certificate requirements. The maximum allowable fees shall be adjusted no less than every five years, as of January 1 of that year, in an amount not less than 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 or an equivalent successor index.

C. The association shall publish and make available a schedule of the applicable fees for preparation and delivery of the resale certificate and updated resale certificate.

D. 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 option to receive the disclosure packet electronically.

**§ 55.1-2317. Exemptions**

A. The resale certificate required by this chapter need not be provided in the case of:

1. A disposition by a declarant or a developer;
2. A disposition of a unit by gift;
3. A disposition of a unit pursuant to court order if the court so directs;
4. A disposition of a unit by foreclosure or deed in lieu of foreclosure;
5. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction; or
6. A disposition of a unit in a common interest community containing no residential units.

B. In any transaction in which a resale certificate is required and a trustee acts as the seller in the

859 *sale or resale of a unit, the trustee shall obtain the resale certificate from the association and provide*  
860 *the resale certificate to the purchaser.*  
861 **2. That Article 2 (§§ 55.1-1808 through 55.1-1814) of Chapter 18 and Article 5 (§§ 55.1-1990**  
862 **through 55.1-1995) of Chapter 19 of Title 55.1 of the Code of Virginia are repealed.**

INTRODUCED

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