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## HOUSE BILL NO. 2190

Offered January 23, 1995

*A BILL to amend and reenact §§ 55-509, 55-511, and 55-512 of the Code of Virginia, relating to the Property Owners' Association Act.*

Patrons—McClure and Davies

Referred to Committee for Courts of Justice

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

**1. That §§ 55-509, 55-511, and 55-512 of the Code of Virginia are amended and reenacted as follows:**

**§ 55-509. Definitions.**

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

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

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

"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 common area in the declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area in an amount in excess of \$150 per year per lot as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in an amount in excess of \$150 per year per lot as a regular annual assessment in connection with the provision of maintenance and/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" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within ~~this~~ the Commonwealth ~~subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, which (i) is subject to a declaration, (ii) by itself or in combination with other real property to which the declaration by its terms may be extended or with other real property governed by the same association, contains or will contain not more than twenty-five lots which are used or intended to be used for residential purposes, and (iii) contains~~ 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.

"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.

"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. A property owners' association shall not include the association formed pursuant to the Condominium Act (§ 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or the Virginia Membership Camping Act (§ 59.1-311 et seq.).

**§ 55-511. Contract disclosure statement; right of cancellation.**

A. *A Subject to the provision of subsection E of § 55-512, a person selling a lot shall disclose in the contract that (i) the lot is located within a development which is subject to the Virginia Property Owners' Association Act, (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available, and (iv) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.*

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

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60 C. The information contained in the association disclosure packet shall be current as of a specified  
61 date within thirty days of the date of the contract. The purchaser may cancel the contract: (i) within  
62 three days after the date of the contract, if on or before the date that the purchaser signs the contract,  
63 the purchaser receives the association disclosure packet or is notified that the association disclosure  
64 packet will not be available; (ii) within three days after receiving the association disclosure packet if the  
65 association disclosure packet or notice that the association disclosure packet will not be available is hand  
66 delivered; or (iii) within six days after the postmark date if the association disclosure packet or notice  
67 that the association disclosure packet will not be available is sent to the purchaser by United States mail.  
68 The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been  
69 notified that the association disclosure packet will not be available and the association disclosure packet  
70 is not delivered to the purchaser. Notice of cancellation shall be hand delivered or sent by United States  
71 mail, return receipt requested, to the owner. Such cancellation shall be without penalty and the seller  
72 shall cause any deposit to be returned promptly to the purchaser.

73 D. If more than six months have elapsed between the contract date and the date of settlement, the  
74 purchaser may submit a copy of the contract to the property owners' association with a request for  
75 assurance that the information required by § 55-512 previously furnished pursuant to subsection A of  
76 this section remains materially unchanged, or, if there have been material changes, a statement  
77 specifying such changes. The purchaser shall be provided with such assurances or such statement within  
78 ten days of the receipt of such request by the property owners' association. The purchaser may be  
79 required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect  
80 the actual cost incurred by the property owners' association in providing such assurances but shall not  
81 exceed fifty dollars. If settlement has not occurred and the purchaser has not cancelled the contract in  
82 accordance with subsection C of this section, the purchaser may renew requests for assurances as  
83 provided herein every six months.

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

86 F. The rights afforded a purchaser pursuant to this section and § 55-512 may be waived in writing by  
87 the purchaser in a separate document.

88 § 55-512. Association disclosure packet.

89 A. Subject to the provisions of ~~subsection~~ *subsections B of this section and E*, the association shall  
90 make available to an owner or his authorized agent within fourteen days after receipt of a written  
91 request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt,  
92 the seller shall deliver to the purchaser. If hand delivered, the written request and fee are deemed  
93 received on the date of delivery. If sent by United States mail, the request and fee are deemed received  
94 six days after the postmark date. An association disclosure packet shall contain the following:

95 1. The name of the association and, if incorporated, the state in which the association is incorporated  
96 and the name and address of its registered agent in Virginia;

97 2. A statement of any capital expenditure anticipated by the association within the current year and,  
98 where available, the two succeeding fiscal years;

99 3. A statement, including the amount of all assessments and any other mandatory fees or charges  
100 currently imposed by the association applicable to the lot being purchased and to the right of use of  
101 common areas, and the status of the account;

102 4. A statement whether there is any other entity or facility to which the lot owner may be liable for  
103 fees or other charges;

104 5. A statement or a summary of the status and amount of any reserve or replacement fund and any  
105 portion of the fund allocated by the board of directors for a specified project;

106 6. A copy of the association's current budget or a summary thereof, and a copy of its statement of  
107 income and expenses or statement of its financial condition for the last fiscal year for which such  
108 statement is available;

109 7. A statement of the nature of any pending suit or unpaid judgment to which the association is a  
110 party which either could or would have a material impact on the association or its members or which  
111 relates to the lot being purchased;

112 8. A statement setting forth all insurance coverage, including any fidelity bond, maintained by the  
113 association;

114 9. A statement as to whether any notice has been given to the seller that any improvement or  
115 alteration made to the lot, or uses made of the lot or common area assigned thereto, are in violation of  
116 any of the instruments referred to in subdivision 11 of this subsection;

117 10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to  
118 place a sign on the owner's lot advertising the lot for sale; and

119 11. A copy of the current declaration, the association's articles of incorporation and bylaws, and any  
120 rules and regulations or architectural guidelines promulgated by the association.

121 The disclosure packet, once received by the seller from the association, shall be delivered by the

seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the purchaser of the lot. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

B. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. The fee shall reflect the actual cost of the preparation of the packet, but shall not exceed \$100.

C. When a disclosure packet has been issued as required by this section, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of any of the instruments referred to in subdivision 10 of subsection A of this section as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

D. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

E. The contract disclosures *required by § 55-511* and *the disclosure packet required by this section* need not be prepared or delivered *provided* in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot in a development where all the lots are that is zoned for or otherwise restricted to nonresidential use; or
5. A disposition of a lot to a person in the business of selling real estate who offers lots for his own account or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence. A statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot.

F. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the packet to the purchaser.