

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 222

An Act to amend and reenact §§ 55-79.97, 55-484, 55-512, and 55-530 of the Code of Virginia, relating to the Common Interest Community Management Information Fund.

[H 2259]

Approved March 9, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.97, 55-484, 55-512, and 55-530 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, such owner shall obtain from the unit owners' association and furnish to the purchaser, prior to the contract date of the disposition, the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and, if applicable, an appropriate statement pursuant to § 55-79.85;

2. A statement of any capital expenditures anticipated by the unit owners' association within the current or succeeding two fiscal years;

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association and associated with the purchase, disposition and maintenance of the condominium unit and the use of the common elements;

4. A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the board of directors;

5. A copy of the unit owners' association's current budget or a summary thereof prepared by the association and a copy of the statement of financial condition of the unit owners' association for the last fiscal year for which a statement is available;

6. A statement of the nature and status of any pending suits or judgments in which the unit owners' association is a party which either could or would have a material impact on the association or the unit owners or which relates to the unit being purchased;

7. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and what additional insurance coverage would normally be secured by each individual unit owner;

8. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

9. A copy of the current bylaws and rules and regulations of the unit owners' association and the amendments thereto; ~~and~~

10. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title; *and*

11. *A certificate that the unit owners' association has filed the annual report required by § 55-79.93.1; the certificate shall indicate the registration number and date of registration with the agency.*

Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.

B. If more than sixty days have elapsed between the contract date of the disposition and the date of settlement, the purchaser may submit a copy of the contract to the unit owners' association with a request for assurance that statements previously furnished pursuant to subsection A hereof remain materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within ten days of the receipt of such request by the unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for statements requested pursuant to subsection A hereof, if any.

C. In the absence of a written agreement to the contrary, the failure of the unit owners' association to provide the statement required by subsection B or the disclosure by such statement that there have been one or more material changes shall, at the option of the purchaser, render void the contract of purchase.

D. The unit owners' association shall furnish the statements and copies of documents prescribed by subsection A hereof upon the written request of any unit owner within ten days of the receipt of such request. Payment of the reasonable costs of preparing such statements and copies of documents may be required of the unit owner requesting them as a prerequisite to their issuance, but the total fee shall not exceed \$100, including and not in addition to, any fee charged pursuant to subsection H of §§ 55-79.84 and § 55-79.85.

E. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter,

the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

§ 55-484. Resales of cooperative interests.

A. Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection B of § 55-476, a proprietary lessee shall furnish to a purchaser before execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules or regulations of the association and a certificate containing:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the cooperative interest;
2. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling proprietary lessee;
3. A statement of any other fees payable by proprietary lessees;
4. A statement of any capital expenditures anticipated by the association for the current and next two succeeding fiscal years;
5. A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;
6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
7. The current operating budget of the association;
8. A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
9. A statement describing any insurance coverage provided for the benefit of proprietary lessees;
10. A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;
11. A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto or any other portion of the cooperative;
12. A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal thereof;
13. Except where no public offering statement was prepared, a statement that the public offering statement and any amendments thereto are records of the association available for inspection by the purchaser;
14. An accountant's statement, if any was prepared, as to the deductibility for federal income taxes purposes by the proprietary lessee of real estate taxes and interest paid by the association; ~~and~~
15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on termination of the cooperative; *and*
16. *A certificate that the proprietary lessees' association has filed the annual report required by § 55-504.1; the certificate shall indicate the registration number and date of registration with the Real Estate Board.*

B. The association, within ten days after a request by a proprietary lessee, shall furnish a certificate containing the information necessary to enable the proprietary lessee to comply with this section. A proprietary lessee providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

§ 55-512. Association disclosure packet.

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

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;
2. A statement of any capital expenditure anticipated by the association within the current year and, where available, the two succeeding fiscal years;
3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association applicable to the lot being purchased and to the right of use of common areas, and the status of the account;

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

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

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

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

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

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

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

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

12. *A certificate that the property owners' association has filed the annual report required by § 55-516.1; the certificate shall indicate the registration number and date of registration with the Real Estate Board.*

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 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 that is zoned for or otherwise restricted to nonresidential use; or

5. A disposition of a lot to a person 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, unless requested by such person or entity. If such disclosures are not requested, 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. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

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.

§ 55-530. Powers of the Board.

A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by § 54.1-2105.1 and this chapter. The Board may use the Fund created by this chapter for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;
2. Expeditious and inexpensive procedures for resolving common interest community disputes; ~~and~~
3. *Seminars and educational programs designed to address topics of concern to community associations; and*

~~3- 4.~~ Other programs deemed necessary and proper to accomplish the purpose of this chapter.

B. The Board shall establish accounting procedures whereby sixty percent of the net revenues collected in any fiscal year shall be expended in accordance with subsection A in the calendar year that begins during that fiscal year.

C. The Board shall issue a certificate of registration to each association registered pursuant to this title. The certificate shall include the date of registration and a unique registration number assigned by the Board.

~~C- D.~~ The Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) to accomplish the purpose of this chapter.