

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 263

An Act to amend and reenact § 55-79.97 of the Code of Virginia, relating to the Condominium Act; resale certificate.

[H 2699]

Approved March 18, 1999

Be it enacted by the General Assembly of Virginia:

1. That § 55-79.97 of the Code of Virginia is 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, and subject to the provisions of subsection J and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate, and (iv) the right to receive the resale certificate 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.*

C. *The information contained in the resale certificate shall be current as of a specified date within thirty days of the date of the contract. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be hand delivered or sent by United States mail, return receipt requested, to the unit owner selling the unit. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.*

A resale certificate ~~which~~ shall include 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 expenditure of funds approved by the unit owners' association or the executive organ which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;

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, and the status of the account;

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

5. 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 executive organ;

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

7. A statement of the nature and status of any pending suits or unpaid judgments to 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;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including any fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. 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;

10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the unit owners' association and the amendments thereto;

11. 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;

12. Certification, if applicable, that the association has filed with the Real Estate Board the annual report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real Estate Board and the expiration date of such filing; and

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling.

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

The resale certificate, once received by the owner from the unit owners' association, shall be delivered by the owner to the purchaser. The unit owners' association shall have no obligation to deliver the resale certificate to the purchaser of the unit. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

~~B.~~ *D.* If more than six months have elapsed between the purchase contract date 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~~ *C* 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 the resale certificate, if any.

~~C.~~ *E.* 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~~ *D* or the disclosure by such statement that there have been one or more material changes shall render the purchase contract void at the option of the purchaser.

~~D.~~ *F.* The unit owners' association shall furnish the resale certificate upon the written request of any unit owner within fourteen days of the receipt of such request. Payment of the reasonable costs of preparing the resale certificate may be required of the unit owner requesting ~~them~~ *it* as a prerequisite to ~~their~~ *its* 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.~~ *G.* When a resale certificate has been issued as required by this section, the unit owners' 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 unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

~~F.~~ *H.* If the unit owners' association has been requested to furnish the resale certificate required by this section and has been paid the appropriate fee, its failure to provide the resale certificate in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the unit owners' association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the condominium instruments, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The unit owners' 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 condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

~~G.~~ *I.* 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.).

~~H.~~ *J.* The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs;
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
4. A disposition of a unit to a person or entity who is not acquiring the unit 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 unit for such purpose shall be conclusive and may be relied upon by the seller of the unit. The person or entity acquiring the unit shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters.

~~I.~~ *K.* In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.