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HOUSE BILL NO. 1716**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Senator Mims
on February 14, 2001)

(Patron Prior to Substitute—Delegate Callahan)

A BILL to amend and reenact §§ 55-79.41, 55-79.75, 55-509, and 55-510.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-79.75:1 and 55-510.2, relating to the Condominium and Property Owners' Association Acts; meetings.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.41, 55-79.75, 55-509, and 55-510.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 55-79.75:1 and 55-510.2 as follows:

§ 55-79.41. Definitions.

When used in this chapter:

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

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

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

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of "unit," *infra*.)

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter.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

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

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of "unit," *infra*.)

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § 55-79.74:3; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55-79.74:3. The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

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

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

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

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

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

64 "Institutional lender" means one or more commercial or savings banks, savings and loan associations,
65 trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or
66 business trusts including but not limited to real estate investment trusts, any other lender regularly
67 engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans
68 made by such a lender, or any combination of any of the foregoing entities.

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

74 "Leasehold condominium" means a condominium in all or any portion of which each unit owner
75 owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all
76 such leasehold interests due to expire naturally at the same time. A condominium including leased land,
77 or an interest therein, within which no units are situated or to be situated shall not be deemed a
78 leasehold condominium within the meaning of this chapter.

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

81 "*Meeting*" or "*meetings*" means the formal gathering of the executive organ where the business of the
82 unit owners' association is discussed or transacted.

83 "Nonbinding reservation agreement" means an agreement between the declarant and a prospective
84 purchaser which is in no way binding on the prospective purchaser and which may be canceled without
85 penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by
86 United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any
87 time prior to the formation of a contract for the sale or lease of a condominium unit or an interest
88 therein. Such agreement shall not contain any provision for waiver or any other provision in derogation
89 of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such
90 provision be a part of any ancillary agreement.

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

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

97 "Par value" means a number of dollars or points assigned to each unit by the declaration.
98 Substantially identical units shall be assigned the same par value, but units located at substantially
99 different heights above the ground, or having substantially different views, or having substantially
100 different amenities or other characteristics that might result in differences in market value, may, but need
101 not, be considered substantially identical within the meaning of this subsection. If par value is stated in
102 terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market
103 value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect
104 the par value of any unit, or any undivided interest in the common elements, voting rights in the unit
105 owners' association or liability for common expenses assigned on the basis thereof.

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

108 "Purchaser" means any person or persons, other than a declarant, who acquire by means of a
109 voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest,
110 including renewal options, of less than twenty years or (ii) as security for a debt.

111 "Size" means the number of cubic feet, or the number of square feet of ground and/or floor space,
112 within each unit as computed by reference to the plat and plans and rounded off to a whole number.
113 Certain spaces within the units including, without limitation, attic, basement, and/or garage space may,
114 but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as
115 the same basis of calculation is employed for all units in the condominium, and so long as that basis is
116 described in the declaration.

117 "Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or
118 group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a
119 contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or
120 remove any officers of the unit owners' association or the executive organ pursuant to subsection A of
121 § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument

or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.66.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of "condominium unit," supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.62.

"Unit owner" means one or more persons who own a condominium unit, or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. This term shall not include any person or persons holding an interest in a condominium unit solely as security for a debt.

§ 55-79.75. Meetings of unit owners' associations and executive organs.

A. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer who shall, at least twenty-one days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units and to such other addresses as any of them may have designated to such officer; or notice may be hand delivered by the officer, provided the officer certifies in writing that notice was delivered to the person of the unit owner.

B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ shall be open to all unit owners of record. *The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section.* Minutes shall be recorded and shall be available as provided in § 55-79.74:1. *Notice including the time, date and place of each meeting of the executive organ shall be furnished to any unit owner who requests such information. Requests by a unit owner to be notified on a continual basis shall be made at least once a year in writing and include the unit owner's name, address, and zip code of the time, date, and place of each meeting of the executive organ shall be published where it is reasonably calculated to be available to a majority of the unit owners and shall be sent by first-class mail or email to any unit owner requesting such notice. A unit owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any email address as appropriate.* Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the unit owners' association's executive organ 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 a unit owners' association's executive organ for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive organ.

Any unit owner may make an audio recording of any portion of a meeting required to be open. The executive organ conducting the meeting may adopt rules governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings.

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

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

C. The executive organ may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' 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 executive organ 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 executive organ, 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 executive organ, the executive organ shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive organ may limit the comments of unit owners to the topics listed on the meeting agenda.

§ 55-79.75:1. Distribution of information by members.

The executive organ shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive organ regarding any matter concerning the unit owners' association.

§ 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.

"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 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 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.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"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.

§ 55-510.1. Meetings of the board of directors.

A. All meetings of the board of directors 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 shall be recorded and shall be available as provided in subsection B of § 55-510.

B. ~~Notice including the time, date and place of each meeting of the board of directors shall be furnished to any member who requests such information. Requests by a member to be notified on a continual basis shall be made at least once a year in writing and include the member's name, address, and zip code of the time, date, and place of each meeting of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners and shall be sent by first-class mail or email to any lot owner requesting such notice. A lot owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the lot owners' name, address, zip code, and any email address as appropriate.~~

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association's 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 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.

Any member may make an audio recording of any portion of a meeting required to be open. The board of directors conducting the meeting may adopt rules governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings.

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

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

C. The board of directors may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or 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, 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 of time during a 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.

§ 55-510:2. Distribution of information by members.

The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.