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HOUSE BILL NO. 2634

House Amendments in [] — January 28, 2003

A BILL to amend and reenact §§ 55-79.41, 55-79.75, 55-79.77, and 55-510 of the Code of Virginia, relating to meetings of condominium unit owners' associations and executive organs; notice and voting by electronic transmission.

Patron Prior to Engrossment—Delegate Plum

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.41, 55-79.75, 55-79.77, and 55-510 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.41. Definitions.

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"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~~ 1 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~~ 1 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~~ 1 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

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59 condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

60 *"Electronic transmission" means any form of communication, not directly involving the physical*
61 *transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient*
62 *thereof, and that may be directly reproduced in paper form by such a recipient through an automated*
63 *process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic*
64 *Transactions Act shall have the meaning set forth in such section.*

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

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

69 "Future common expenses" means common expenses for which assessments are not yet due and
70 payable.

71 "Identifying number" means ~~one~~ 1 or more letters and/or numbers that identify only ~~one~~ 1 unit in the
72 condominium.

73 "Institutional lender" means ~~one~~ 1 or more commercial or savings banks, savings and loan
74 associations, trust companies, credit unions, industrial loan associations, insurance companies, pension
75 funds, or business trusts including but not limited to real estate investment trusts, any other lender
76 regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee
77 of loans made by such a lender, or any combination of any of the foregoing entities.

78 "Land" is a ~~three~~ 3-dimensional concept and includes parcels with upper or lower boundaries, or both
79 upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace
80 constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient
81 description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the
82 parcel in question be identified with reference to established datum.

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

88 "Limited common element" means a portion of the common elements reserved for the exclusive use
89 of those entitled to the use of ~~one~~ 1 or more, but less than all, of the units.

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

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

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

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

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

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

117 "Purchaser" means any person or persons, other than a declarant, who acquire by means of a
118 voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest,
119 including renewal options, of less than ~~twenty~~ 20 years or (ii) as security for a debt.

120 "Size" means the number of cubic feet, or the number of square feet of ground and/or floor space,

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

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 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~~ 1 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 *or his agent* who shall, at least ~~twenty-one~~ 21 days in advance of any annual or regularly scheduled meeting, and at least ~~seven~~ 7 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 his agent*; or notice may be hand delivered by the officer *or his agent*, provided the officer *or his agent* certifies in writing that notice was delivered to the person of the unit owner.

In lieu of delivering notice as specified in the preceding paragraph of this subsection, such officer or his agent may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the unit owner to whom the notice is given, provided the officer or his agent certifies in writing that notice was sent.

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. *The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given.* Minutes shall be recorded and shall be available as provided in § 55-79.74:1. Notice 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 e-mail 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 e-mail 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~~ 1 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~~ 2 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.

182 C. The executive organ may convene in executive session to consider personnel matters; consult with
183 legal counsel; discuss and consider contracts, probable or pending litigation and matters involving
184 violations of the condominium instruments or rules and regulations promulgated pursuant thereto for
185 which a unit owner, his family members, tenants, guests or other invitees are responsible; or discuss and
186 consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in
187 an open meeting to assemble in executive session. The motion shall state specifically the purpose for the
188 executive session. Reference to the motion and the stated purpose for the executive session shall be
189 included in the minutes. The executive organ shall restrict the consideration of matters during such
190 portions of meetings to only those purposes specifically exempted and stated in the motion. No contract,
191 motion or other action adopted, passed or agreed to in executive session shall become effective unless
192 the executive organ, following the executive session, reconvenes in open meeting and takes a vote on
193 such contract, motion or other action which shall have its substance reasonably identified in the open
194 meeting. The requirements of this section shall not require the disclosure of information in violation of
195 law.

196 D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a
197 designated period of time during a meeting to allow unit owners an opportunity to comment on any
198 matter relating to the unit owners' association. During a meeting at which the agenda is limited to
199 specific topics or at a special meeting, the executive organ may limit the comments of unit owners to
200 the topics listed on the meeting agenda.

201 § 55-79.77. Same; voting.

202 A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A
203 and B of § 55-79.58 a number of votes in the unit owners' association proportionate to the undivided
204 interest in the common elements appertaining to each such unit.

205 B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit
206 owners' association, subject to the following exception: Each convertible space so depicted shall be
207 allocated a number of votes in the unit owners' association proportionate to the size of each such space,
208 vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners'
209 association shall be allocated equally to the other units so depicted.

210 C. Since a unit owner may be more than ~~one~~ 1 person, if only ~~one~~ 1 of such persons is present at a
211 meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that
212 unit. But if more than ~~one~~ 1 of such persons is present, the vote appertaining to that unit shall be cast
213 only in accordance with their unanimous agreement unless the condominium instruments expressly
214 provide otherwise, and such consent shall be conclusively presumed if any ~~one~~ 1 of them purports to
215 cast the votes appertaining to that unit without protest being made forthwith by any of the others to the
216 person presiding over the meeting. Since a person need not be a natural person, the word "person" shall
217 be deemed for the purposes of this subsection to include, without limitation, any natural person having
218 authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or
219 in conjunction with another person or persons, a unit owner.

220 D. The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by
221 or on behalf of the unit owner, or, in cases where the unit owner is more than ~~one~~ 1 person, by or on
222 behalf of all such persons. No such proxy shall be revocable except by actual notice to the person
223 presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. *Except to*
224 *the extent otherwise provided in the condominium instruments,* any proxy shall be void if it is not dated,
225 *or if it purports to be revocable without notice as aforesaid; or if the signatures of any of those*
226 *executing the same have not been witnessed by a person who shall sign his full name and address.* The
227 proxy of any person shall be void if not signed by a person having authority, at the time of the
228 execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate after the first
229 meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy
230 shall include a brief explanation of the effect of leaving the proxy uninstructed. *To the extent the*
231 *condominium instruments or rules adopted thereto expressly so provide, a vote or proxy may be*
232 *submitted by electronic transmission, provided that any such electronic transmission shall either set*
233 *forth or be submitted with [information] from which it can be determined that the electronic*
234 *transmission was authorized by the unit owner or the unit owner's proxy.*

235 E. If ~~fifty~~ 50 percent or more of the votes in the unit owners' association appertain to ~~twenty-five~~ 25
236 percent or less of the units, then in any case where a majority vote is required by the condominium
237 instruments or by this chapter, the requirement for such a majority shall be deemed to include, in
238 addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

239 F. All votes appertaining to units owned by the unit owners' association shall be deemed present for
240 quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in
241 the same proportions as the votes cast by unit owners other than the unit owners' association.

242 § 55-510. Access to association records; meetings of the board of directors.

243 A. The association shall keep detailed records of receipts and expenditures affecting the operation

and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the association, including, but not limited to, the association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation, and aggregate salary information of employees of the association, shall be available for examination and copying by a member in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the association. This right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon ~~five~~ 5 days' written notice reasonably identifying the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55-513;

5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55-510.1;

8. Documentation, correspondence or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof.

E. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer *or his agent* who shall, at least ~~fourteen~~ 14 days in advance of any annual or regularly scheduled meeting, and at least ~~seven~~ 7 days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. Notice shall be sent by United States mail to all members at the address of their respective lots and to such other addresses as any of them may have designated to such officer *or his agent*; or notice may be hand delivered by the officer *or his agent*, provided the officer *or his agent* certifies in writing that notice was delivered to the member.