

075220520

HOUSE BILL NO. 2016

Offered January 10, 2007

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A BILL to amend and reenact §§ 55-79.81, 55-79.97, 55-511, and 55-512 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-79.74:01 and 55-514.2, relating to the Condominium and Property Owners' Association Acts; insurance; deposit of funds; charges for and delivery of resale certificates/disclosure packets.

Patron—Suit

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.81, 55-79.97, 55-511, and 55-512 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-79.74:01 and 55-514.2 as follows:

§ 55-79.74:01. Deposit of funds.

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners' association and shall be segregated for each depository in the records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

§ 55-79.81. Insurance.

A. The condominium instruments may require the unit owners' association, or the executive organ or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements.

2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium.

3. Such other policies as may be required by the condominium instruments, including, without limitation, workers' compensation insurance, liability insurance on motor vehicles owned by the association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy covering the officers, directors, and persons employed by the unit owners' association, and any managing agent and employees of the managing agent. Such bond or insurance policy shall provide a minimum of \$10,000 in coverage. The executive organ or managing agent may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55-79.75.

§ 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, 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, (iv) the purchaser has a right to request an update of the resale certificate in accordance with subsection D, and (v) 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 date specified on the

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59 resale certificate. The purchaser may cancel the contract (i) within three days after the date of the
60 contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the
61 contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand
62 delivered or delivered with the consent of the purchaser by electronic means and a receipt obtained; or
63 (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United
64 States mail. Notice of cancellation shall be hand delivered or sent by United States mail, return receipt
65 requested, to the unit owner selling the unit or his agent. Such cancellation shall be without penalty, and
66 the unit owner shall cause any deposit to be returned promptly to the purchaser. The unit owners'
67 association may also send the resale certificate by electronic means with the consent of the seller and
68 the purchaser unless either the seller or the purchaser requests a paper certificate.

69 A resale certificate shall include the following:

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

72 2. A statement of any expenditure of funds approved by the unit owners' association or the executive
73 organ which shall require an assessment in addition to the regular assessment during the current or the
74 immediately succeeding fiscal year;

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

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

80 5. The current reserve study report or a summary thereof, a statement of the status and amount of
81 any reserve or replacement fund and any portion of the fund designated for any specified project by the
82 executive organ;

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

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

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

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

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

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

98 12. A copy of the notice given to the unit owner by the unit owners' association of any current or
99 pending rule or architectural violation;

100 13. Certification, if applicable, that the association has filed with the Real Estate Board the annual
101 report required by § 55-79.93:1; which certification shall indicate the filing number assigned by the Real
102 Estate Board and the expiration date of such filing; and

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

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

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

110 D. The purchaser may submit a copy of the contract to the unit owners' association with a request
111 for assurance that statements previously furnished pursuant to subsection C remain materially unchanged,
112 or, if there have been material changes, a statement specifying such changes. The purchaser shall be
113 provided with such assurances or such statement within ten days of the receipt of such request by the
114 unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for
115 the resale certificate, if any. Any fee shall reflect the actual cost incurred by the unit owners' association
116 in providing the assurances, but shall not exceed \$0.10 per page in copying costs or a total of \$50 for
117 all costs incurred in updating the resale certificate. The unit owners' association may also collect from
118 the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to
119 this subsection. In no event, however, shall the unit owners' association require reimbursement of any
120 costs not expressly authorized in this subsection. Nor shall the unit owners' association charge any other

fee for the preparation or issuance of such resale certificate or making such certificate available by electronic means except as expressly provided in this subsection.

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 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.

F. The unit owners' association shall furnish the resale certificate upon the written request of any unit owner within 14 days of the receipt of such request. Payment of the actual costs of preparing the resale certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but the total fee shall not exceed \$0.10 per page in copying costs or a total of \$100, including and not in addition to, any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85, for all costs incurred in preparing the resale certificate, ~~except that . However, the unit owners' association, upon mutual agreement with the seller, may:~~

1. *Upon mutual agreement with the seller, collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a:*

a. A rush fee, not to exceed \$25, for furnishing the resale certificate within three business days from the actual receipt of the request; (ii) ~~the~~

b. The actual cost of any mailing or delivery requested by the seller pursuant to this subsection; and (iii) ~~any~~

c. Any actual cost incurred at the request and with the consent of the purchaser; and

2. *Collect a reasonable fee for preparing the resale certificate if the amount of the fee is established in the contract between the unit owners' association and any managing agent and the amount of the fee is disclosed on the unit owners' association's website or the website of its managing agent.* Neither the unit owners' association nor its management agent, if any, shall require cash or certified funds unless the unit owner is delinquent in any payments due to the unit owners' association in excess of 30 days or if a check of the unit owner made payable to the unit owners' association was returned for insufficient funds within the last six months. In no event, however, shall the unit owners' association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the unit owners' association charge any other fee for the preparation or issuance of such resale certificate or making such certificate available by electronic means except as expressly provided in this subsection.

Except to the extent that the condominium instruments provide otherwise, any unit owners' association authorized to charge a fee for the furnishing of a resale certificate pursuant to this subsection shall promptly pay the fee to the managing agent where the managing agent furnishes the resale certificate and shall assess the fee against the unit for which the certificate was prepared.

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 resale certificate unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

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. The settlement agent, as defined in § 6.1-2.20, when transmitting funds to a unit owners' association or otherwise upon request, shall provide the unit owners' association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise prohibited, shall satisfy these requirements.

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.).

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; or
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure.

K. In any transaction in which a resale certificate is required and a trustee acts as the seller in the

182 sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association
183 and provide the resale certificate to the purchaser.

184 § 55-511. Contract disclosure statement; right of cancellation.

185 A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in the
186 contract that (i) the lot is located within a development which is subject to the Virginia Property
187 Owners' Association Act; (ii) the Act requires the seller to obtain from the property owners' association
188 an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the
189 contract within three days after receiving the association disclosure packet or being notified that the
190 association disclosure packet will not be available; (iv) if the purchaser has received the association
191 disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance
192 with § 55-512; and (v) the right to receive the association disclosure packet and the right to cancel the
193 contract are waived conclusively if not exercised before settlement.

194 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if
195 (i) a current annual report has not been filed by the association with either the State Corporation
196 Commission pursuant to § 13.1-936 or with the Real Estate Board pursuant to § 55-516.1, (ii) the seller
197 has made a written request to the association that the packet be provided and no such packet has been
198 received within 14 days in accordance with subsection E of § 55-512, or (iii) written notice has been
199 provided by the association that a packet is not available.

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

202 C. The information contained in the association disclosure packet shall be current as of a date
203 specified on the association disclosure packet obtained by the seller in accordance with this section. The
204 purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the
205 date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is
206 notified that the association disclosure packet will not be available; (ii) within three days after receiving
207 the association disclosure packet if the association disclosure packet or notice that the association
208 disclosure packet will not be available is hand delivered or delivered ~~with the consent of the purchaser~~
209 by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the
210 association disclosure packet or notice that the association disclosure packet will not be available is sent
211 to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to
212 settlement if the purchaser has not been notified that the association disclosure packet will not be
213 available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation
214 shall be hand delivered ~~or~~, sent by United States mail, return receipt requested, *or sent by electronic*
215 *means* to the owner or his agent. *In the event of a dispute, the sender shall have the burden to*
216 *demonstrate delivery of the notice of cancellation.* Such cancellation shall be without penalty, and the
217 seller shall cause any deposit to be returned promptly to the purchaser. The association may also send
218 the resale certificate by electronic means ~~with the consent of the seller and the purchaser unless either~~
219 *the seller or the purchaser requests a paper disclosure packet.*

220 D. Whenever any contract is canceled based on a failure to comply with subsection A or C or
221 pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the
222 cancellation, unless the parties to the contract agreed upon a shorter period.

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

225 F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may not
226 be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived.

227 § 55-512. Contents of association disclosure packet; other requirements.

228 A. Subject to the provisions of subsections C and F, the association shall make available to an owner
229 or his authorized agent within 14 days after receipt of a written request therefor and receipt of the
230 appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the
231 purchaser. The information contained in the association disclosure packet shall be current as of a date
232 specified on the association disclosure packet. If hand or electronically delivered, the written request and
233 fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are
234 deemed received six days after the postmark date. An association disclosure packet shall contain the
235 following:

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

238 2. A statement of any expenditure of funds approved by the association or the board of directors
239 which shall require an assessment in addition to the regular assessment during the current year or the
240 immediately succeeding fiscal year;

241 3. A statement, including the amount of all assessments and any other mandatory fees or charges
242 currently imposed by the association and associated with the purchase, disposition and maintenance of
243 the lot 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. The current reserve study report or summary thereof, a statement 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 prepared by the association, 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 and status 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 what insurance coverage is provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in subdivision 12 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;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

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

13. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

14. A copy of the fully completed one-page cover sheet developed by the Real Estate Board pursuant to § 54.1-2105.1; and

15. 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.

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

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 purchaser may submit a copy of the contract to the association with a request for assurance that the information required by this section previously furnished remains 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 10 days of the receipt of such request by the association. The purchaser may be required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the association in providing such assurances but shall not exceed \$0.10 per page of copying costs or a total of \$50 for all costs incurred in updating the association disclosure packet. The association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection. In no event, however, shall the association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the association charge any other fee for the preparation or issuance of such association disclosure packet or making such packet available by electronic means except as expressly provided in this subsection.

C. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet; ~~except that. However, the association, upon mutual agreement with the seller, may:~~

1. *Upon mutual agreement with the seller, collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a*

a. A rush fee, not to exceed \$25, for furnishing the ~~resale certificate~~ *disclosure packet* within three business days from the actual receipt of the request; ~~(ii) the~~

b. The actual cost of any mailing or delivery requested by the seller pursuant to this subsection; and

305 (iii) any

306 c. Any actual cost incurred at the request and with the consent of the purchaser; and

307 2. Collect a reasonable fee for preparing the association disclosure packet if the amount of the fee is
308 established in the contract between the association and any managing agent and the amount of the fee
309 is disclosed on the association's website or the website of its managing agent.

310 Neither the association nor its management agent, if any, shall require cash or certified funds unless
311 the lot owner is delinquent in any payments due to the association in excess of 30 days or if a check of
312 the lot owner made payable to the association was returned for insufficient funds within the last six
313 months. In no event, however, shall the association require reimbursement of any costs not expressly
314 authorized in this subsection. Nor shall the association charge any other fee for the preparation or
315 issuance of such association disclosure packet or making such packet available by electronic means
316 except as expressly provided in this subsection.

317 Any association authorized to charge a fee for the furnishing of a disclosure packet pursuant to this
318 subsection shall promptly pay the fee to the managing agent where the managing agent furnishes the
319 resale certificate and shall assess the fee against the lot owner for which the disclosure packet was
320 prepared.

321 D. When a disclosure packet has been issued as required by this section, the association shall, as to
322 the purchaser, be bound by the statements set forth therein as to the status of the assessment account
323 and the status of the lot with respect to any violation of any of the instruments referred to in subdivision
324 12 of subsection A as of the date of the statement unless the purchaser had actual knowledge that the
325 contents of the disclosure packet were in error.

326 E. If the association has been requested to furnish the disclosure packet required by this section and
327 has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form
328 provided herein within 14 days from the actual receipt of the request by an officer, director or agent of
329 the association shall be deemed a waiver of any claim for delinquent assessments or of any violation of
330 the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the
331 request with respect to the subject lot. The association shall be liable to the seller in an amount equal to
332 the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall
333 nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural
334 guidelines of the association as to all matters arising after the date of the settlement of the sale. The
335 settlement agent, as defined in § 6.1-2.20, when transmitting funds to the association or otherwise upon
336 request, shall provide the association with (i) the name of the seller, (ii) the name and address of the
337 purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation
338 of the application of any funds transmitted. Providing a copy of the HUD-1 settlement statement, unless
339 otherwise prohibited, shall satisfy these requirements.

340 F. The contract disclosures required by § 55-511 and the disclosure packet required by this section
341 need not be provided in the case of:

342 1. A disposition of a lot by gift;

343 2. A disposition of a lot pursuant to court order if the court so directs;

344 3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;

345 4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or

346 5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or
347 for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by
348 such person or entity. If such disclosures are not requested, a statement in the contract of sale that the
349 purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the
350 seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the
351 declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all
352 matters.

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

356 § 55-514.2. Deposit of funds.

357 All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept
358 in a fiduciary trust account in a federally insured financial institution separate from other assets of the
359 managing agent. The funds shall be the property of the association and shall be segregated for each
360 depository in the records of the managing agent in a manner that permits the funds to be identified on
361 an individual association basis.

362 2. That the Real Estate Board shall revise the annual report form required by §§ 55-79.93:1 and
363 55-516.1 to request the website address, if any, of a condominium unit owners' association or
364 property owners' association, respectively, and of any company serving as the managing agent of a
365 condominium unit owners' association or property owners' association.

366 3. That the Department of Professional and Occupation Regulation shall include the information

367 provided pursuant to the second enactment of this act among the information posted on the
368 Department's website.

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