

13104142D

HOUSE BILL NO. 1711

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on January 17, 2013)

(Patron Prior to Substitute—Delegate Plum)

A BILL to amend and reenact §§ 55-79.75 and 55-510 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; notice to owners of election of officers at a special meeting.

Be it enacted by the General Assembly of Virginia:

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

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

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 21 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. *In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.*

Notice shall be sent by United States mail to all unit owners of record at the address of their respective units unless the unit owner has provided to such officer or his agent an address other than the address of the unit; 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, including any subcommittee or other committee thereof, 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 of the meetings of the executive organ 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 or of any subcommittee or other committee thereof, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

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 of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the executive organ or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the executive organ, or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the (i) executive organ or any subcommittee or other committee thereof or (ii) subcommittee or other committee of the unit owners' association 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 the executive organ or subcommittee or other committee thereof 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 record any portion of a meeting required to be open. The executive organ or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

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

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

66 C. The executive organ or any subcommittee or other committee thereof may convene in executive
67 session to consider personnel matters; consult with legal counsel; discuss and consider contracts,
68 probable or pending litigation and matters involving violations of the condominium instruments or rules
69 and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants,
70 guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to
71 the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive
72 session. The motion shall state specifically the purpose for the executive session. Reference to the
73 motion and the stated purpose for the executive session shall be included in the minutes. The executive
74 organ shall restrict the consideration of matters during such portions of meetings to only those purposes
75 specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or
76 agreed to in executive session shall become effective unless the executive organ or subcommittee or
77 other committee thereof, following the executive session, reconvenes in open meeting and takes a vote
78 on such contract, motion or other action which shall have its substance reasonably identified in the open
79 meeting. The requirements of this section shall not require the disclosure of information in violation of
80 law.

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

86 **§ 55-510. Access to association records; association meetings; notice.**

87 A. The association shall keep detailed records of receipts and expenditures affecting the operation
88 and administration of the association. All financial books and records shall be kept in accordance with
89 generally accepted accounting practices.

90 B. Subject to the provisions of subsection C and so long as the request is for a proper purpose
91 related to his membership in the association, all books and records kept by or on behalf of the
92 association, shall be available for examination and copying by a member in good standing or his
93 authorized agent including but not limited to:

94 1. The association's membership list and addresses, which shall not be used for purposes of pecuniary
95 gain or commercial solicitation; and

96 2. The actual salary of the six highest compensated employees of the association earning over
97 \$75,000 and aggregate salary information of all other employees of the association; however, individual
98 salary information shall not be available for examination and copying during the declarant control
99 period.

100 This right of examination shall exist without reference to the duration of membership and may be
101 exercised (i) only during reasonable business hours or at a mutually convenient time and location and
102 (ii) upon five days' written notice reasonably identifying the purpose for the request and the specific
103 books and records of the association requested.

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

106 1. Personnel matters relating to specific, identified persons or a person's medical records;

107 2. Contracts, leases, and other commercial transactions to purchase or provide goods or services,
108 currently in or under negotiation;

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

111 4. Matters involving state or local administrative or other formal proceedings before a government
112 tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to
113 § 55-513;

114 5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by
115 the attorney-client privilege or the attorney work product doctrine;

116 6. Disclosure of information in violation of law;

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

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

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

124 D. Prior to providing copies of any books and records to a member in good standing under this
125 section, the association may impose and collect a charge, reflecting the reasonable costs of materials and
126 labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost
127 schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall
128 (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and
129 (iii) be provided to such requesting member at the time the request is made.

130 E. Notwithstanding the provisions of subsections B and C, all books and records of the association,
131 including individual salary information for all employees and payments to independent contractors, shall
132 be available for examination and copying upon request by a member of the board of directors in the
133 discharge of his duties as a director.

134 F. Meetings of the association shall be held in accordance with the provisions of the bylaws at least
135 once each year after the formation of the association. The bylaws shall specify an officer or his agent
136 who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven
137 days in advance of any other meeting, send to each member notice of the time, place, and purposes of
138 such meeting. *In the event of cancellation of any annual meeting of the association at which directors*
139 *are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall*
140 *include a statement that the meeting is scheduled for the purpose of the election of directors.*

141 Notice shall be sent by United States mail to all members at the address of their respective lots
142 unless the member has provided to such officer or his agent an address other than the address of the
143 member's lot; or notice may be hand delivered by the officer or his agent, provided the officer or his
144 agent certifies in writing that notice was delivered to the member. Except as provided in subdivision C
145 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days
146 from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are
147 distributed to board members as part of an agenda package for the next meeting of the board of
148 directors, whichever occurs first.