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HOUSE BILL NO. 690**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on January 30, 2014)

(Patron Prior to Substitute—Delegate Massie)

A BILL to amend the Code of Virginia by adding sections numbered 55-79.71:2, 55-79.73:2, and 55-515.2:1, relating to the Condominium and Property Owners' Association Acts; merger of developments; reformation of declaration.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 55-79.71:2, 55-79.73:2, and 55-515.2:1 as follows:

§ 55-79.71:2. Merger or consolidation of condominiums; procedure.

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums are merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement to merge or consolidate two or more condominiums pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

§ 55-79.73:2. Reformation of declaration; judicial procedure.

A. A unit owners' association may petition the circuit court in the county or city wherein the condominium or the greater part thereof is located to reform the condominium instruments where the unit owners' association, acting through its executive organ, has attempted to amend the condominium instruments using provisions outlined therein to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners; (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake; or (iii) an ambiguity in the condominium instruments with respect to an objectively verifiable fact.

B. The court shall have jurisdiction to:

1. Reform, in whole or in part, any provision of the condominium instruments; and
2. Correct mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:

1. The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association; and

60 4. A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as
61 evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

62 **§ 55-515.2:1. Reformation of declaration; judicial procedure.**

63 A. An association may petition the circuit court in the county or city wherein the development or the
64 greater part thereof is located to reform a declaration where the association, acting through its board
65 of directors, has attempted to amend the declaration using provisions outlined therein to resolve (i)
66 ambiguities or inconsistencies in the declaration that are the source of legal and other disputes
67 pertaining to the legal rights and responsibilities of the association or individual lot owners; (ii)
68 scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other
69 than the association, or errors arising from oversight or from an inadvertent omission or mathematical
70 mistake; or (iii) an ambiguity in the declaration with respect to an objectively verifiable fact.

71 B. The court shall have jurisdiction to:

72 1. Reform, in whole or in part, any provision of a declaration; and

73 2. Correct mistakes or any other error in the declaration that may exist with respect to the
74 declaration for any other purpose.

75 C. A petition filed by the association with the court setting forth any inconsistency or error made in
76 the declaration, or the necessity for any change therein, shall be deemed sufficient basis for the
77 reformation, in whole or in part, of the declaration, provided that:

78 1. The association has made three good faith attempts to convene a duly called meeting of the
79 association to present for consideration amendments to the declaration for the reasons specified in
80 subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of
81 the principal officer of the association;

82 2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may
83 be accomplished in the circuit court;

84 3. Where the declarant of the development still owns a lot or other property in the development, the
85 declarant joins in the petition of the association; and

86 4. A copy of the petition is sent to all owners at least 30 days before the petition is filed as
87 evidenced by an affidavit verified by oath of the principal officer of the association.