

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 410

An Act to amend and reenact §§ 15.2-979, 55-79.41, and 55-509 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-79.84:01 and 55-516.01, relating to the Condominium Act and the Property Owners' Association Act; notice of sale under deed of trust; responsibility of owner.

[H 2080]

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-979, 55-79.41, and 55-509 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-79.84:01 and 55-516.01 as follows:

§ 15.2-979. Notice of sale under deed of trust.

A. Notice shall be given to the chief administrative officer or designee of a locality and, if the property is located in a common interest community as defined in § 55-528, to the common interest community association, when residential property located within that locality or common interest community becomes subject to a sale under a deed of trust.

B. The notice required by this section shall:

1. Be made by the trustee or any substitute trustee authorized to conduct the sale under the deed of trust;

2. Be given no later than 60 days after the sale of the residential property under the deed of trust;

3. Include (i) the street address of the residential property, (ii) the name of all property owners whose ownership was subject to the deed of trust, (iii) the name and contact information, including telephone number, of the person filing the notice, and (iv) the name and address of all owners holding the property as a result of the sale.

C. For residential properties described in subsection A, if the mortgage loan secured by the deed of trust has been registered with a national mortgage loan electronic registration system to which the locality has access and which registry includes a unique mortgage identification number specific to the loan and which number is tied to the name of the borrower, the street address of the property, and contact information consisting of the name, telephone number, and electronic address, if any, of the current mortgage lender or mortgage loan service provider and of the current property preservation contact, then the person authorized to conduct the sale under the deed of trust shall not have to give the locality the notice described in this section and shall be deemed to have complied with any such ordinance.

D. For purposes of this section, "residential property" means single-family detached dwellings, single-family attached dwellings, ~~and~~ individual residential condominium units, *and individual residential lots located in a development subject to the Property Owners' Association Act (§ 55-508 et seq.).*

§ 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.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"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.

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

"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.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § 55-79.97.

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

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

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

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

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

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

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

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any

time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

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

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

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

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

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

"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the original resale certificate.

"Settlement agent" means the same as that term is defined in § 55-525.16.

"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 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 "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person or persons holding an interest in a condominium unit solely as security for a debt.*

§ 55-79.84:01. Notice of sale under deed of trust.

In accordance with the provisions of § 15.2-979, the unit owners' association shall be given notice whenever a condominium unit becomes subject to a sale under a deed of trust. Upon receipt of such notice, the executive organ, on behalf of the unit owners' association, shall exercise whatever due diligence it deems necessary with respect to the unit subject to a sale under a deed of trust to protect the interests of 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.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"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.

"Common interest community" means the same as that term is defined in § 55-528.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"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 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 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.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 of § 55-509.5. The update shall include a copy of the original disclosure packet.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through A 7 of § 55-509.5.

"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.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located.

"Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

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

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"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.

"Settlement agent" means the same as that term is defined in § 55-525.16.

§ 55-516.01. Notice of sale under deed of trust.

In accordance with the provisions of § 15.2-979, the association shall be given notice whenever a lot becomes subject to a sale under a deed of trust. Upon receipt of such notice, the board of directors, on behalf of the association, shall exercise whatever due diligence it deems necessary with respect to the lot subject to a sale under a deed of trust to protect the interests of the association.