

15104377D

HOUSE BILL NO. 2100**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on February 5, 2015)

(Patron Prior to Substitute—Delegate Peace)

A *BILL to amend and reenact §§ 55-79.87, 55-79.97, 55-79.97:1, 55-509.3, 55-509.5, and 55-509.6 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-79.42:1 and 55-79.87:1 and by adding in Article 1 of Chapter 26 of Title 55 a section numbered 55-509.3:1, relating to the Condominium and the Property Owners' Association Acts; allowable charges; rental of units.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.87, 55-79.97, 55-79.97:1, 55-509.3, 55-509.5, and 55-509.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-79.42:1 and 55-79.87:1 and by adding in Article 1 of Chapter 26 of Title 55 a section numbered 55-509.3:1 as follows:

§ 55-79.42:1. Association charges.

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55-79.83, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55-79.97:1. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

§ 55-79.87. Exemptions from certain provisions of article.

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 55-79.88 through 55-79.93, subsections A and C of § 55-79.94, and § 55-79.97 do not apply to:

1. Dispositions pursuant to court order;
2. Dispositions by any government or government agency;
3. Offers by the declarant on nonbinding reservation agreements;
4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or

5. A disposition of a unit by a sale at an auction, where ~~the~~ *a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.*

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ 55-79.88 through 55-79.95 shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

§ 55-79.87:1. Rental of units.

A. *Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no unit owners' association may condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55-79.42:1.*

B. *Except as expressly authorized in this chapter or in the condominium instruments, no unit owners' association shall:*

1. *Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 as a condition of approval of such a rental during the term of any lease;*
2. *Require the unit owner to use a lease prepared by the unit owners' association; or*
3. *Charge a security deposit from the unit owner or the tenant of the unit owner.*

C. *The unit owners' association may require the unit owner to provide the unit owners' association with a copy of any (i) lease with a tenant or (ii) unit owners' association document completed by the unit owner or representative that discloses the names and contact information of tenant and occupants under the lease. The unit owners' association may require the unit owner to provide the unit owners' association with the tenant's acknowledgement of and consent to any rules and regulations of the unit owners' association.*

§ 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 F 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 or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

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 resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Parcel Service, and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

- a. Hand delivery;
- b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;
- c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or
- d. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

A resale certificate shall include the following:

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

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

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition and maintenance of the condominium unit and the use of the common elements, and the status of the account;

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

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

6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;

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

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

9. A statement that any improvements or alterations made to the unit, or the limited common

elements assigned thereto, are or are not in violation of the condominium instruments;

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

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

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

13. A copy of any approved minutes of the executive organ and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § 55-79.93:1; which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing;

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

16. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

17. A statement setting forth any restriction, limitation, or prohibition on the right of a unit owner to install or use solar energy collection devices on the unit owner's property; and

18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

The resale certificate shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or his authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or his authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or his authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or his authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or his authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or his authorized agent to pay any fees to use the provider's electronic network or system. *The resale certificate shall not be delivered in hard copy if the requestor has requested delivery of such resale certificate electronically. If the resale certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee of \$50 as provided in § 55-79.97:1 after the expiration of the 90-day period from the date of issuance of such certificate.* If the seller or his authorized agent asks that the resale certificate be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the resale certificate in electronic format at no additional charge request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requestor. If so requested, the unit owners' association or its common interest community manager may require the seller or his authorized agent to pay the fee specified in § 55-79.97:1. The preparer of the resale packet shall provide such resale packet directly to the designated persons.

E. 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.).

F. 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;
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the 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 **§ 55-79.97:1. Fees for resale certificate.**

185 A. The unit owners' association may charge fees as authorized by this section for the inspection of
186 the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such
187 other services as are set out in this section. Nothing in this chapter shall be construed to authorize the
188 unit owners' association or common interest community manager to charge an inspection fee for a unit
189 except as provided in this section.

190 B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

191 1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale
192 certificate, a fee not to exceed \$100;

193 2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150
194 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of \$125, for an
195 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,
196 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the
197 requestor. Only one fee shall be charged for the preparation and delivery of the resale certificate;

198 3. At the option of the seller or his authorized agent, with the consent of the unit owners' association
199 or the common interest community manager, expediting the inspection, preparation, and delivery of the
200 resale certificate, an additional expedite fee not to exceed \$50;

201 4. At the option of the seller or his authorized agent, an additional hard copy of the resale certificate,
202 a fee not to exceed \$25 per hard copy;

203 5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the
204 actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of
205 the resale certificate; and

206 6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of
207 establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee
208 not to exceed \$50.

209 Neither the unit owners' association nor its common interest community manager shall require cash,
210 check, certified funds, or credit card payments at the time the request for the resale certificate is made.
211 The resale certificate shall state that all fees and costs for the resale certificate shall be the personal
212 obligation of the unit owner and shall be an assessment against the unit and collectible as any other
213 assessment in accordance with the provisions of the condominium instruments and § 55-79.83, if not
214 paid at settlement or within 45 days of the delivery of the resale certificate, whichever occurs first.

215 For purposes of this section, an expedite fee shall only be charged if the inspection and preparation
216 of delivery of the resale certificate are completed within five business days of the request for a resale
217 certificate.

218 C. No fees other than those specified in this section, and as limited by this section, shall be charged
219 by the unit owners' association or its common interest community manager for compliance with the
220 duties and responsibilities of the unit owners' association under this section. No additional fee shall be
221 charged for access to the unit owners' association's or common interest community manager's website.
222 The unit owners' association or its common interest community manager shall publish and make
223 available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or his
224 authorized agent will know such fees at the time of requesting the resale certificate.

225 D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the
226 sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this
227 section. The seller shall be responsible for all costs associated with the preparation and delivery of the
228 resale certificate, except for the costs of any resale certificate update or financial update, which costs
229 shall be the responsibility of the requestor, payable at settlement. *The settlement agent shall escrow a*
230 *sum sufficient to pay such costs at settlement.* Neither the unit owners' association nor its common
231 interest community manager shall require cash, check, certified funds, or credit card payments at the
232 time the request is made for the resale certificate.

233 E. If settlement does not occur within 45 days of the delivery of the resale certificate, or funds are
234 not collected at settlement and disbursed to the unit owners' association or the common interest
235 community manager, all fees, including those costs that would have otherwise been the responsibility of
236 the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale
237 certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment
238 against the unit and collectible as any other assessment in accordance with the provisions of the
239 condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash,
240 check, certified funds, or credit card, if credit card payment is an option offered by the unit owners'
241 association. The unit owners' association shall pay the common interest community manager the amount
242 due from the unit owner within 30 days after invoice.

243 F. The maximum allowable fees charged in accordance with this section shall adjust every five years,
244 as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the

United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent or the purchaser or his authorized agent, may request a resale certificate update. The requestor shall specify whether the resale certificate update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. *The settlement agent shall escrow a sum sufficient to pay such costs at settlement.* Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the unit owners' association. If the requestor asks that the specified update be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the requestor to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When a resale certificate has been delivered as required by § 55-79.97, 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 statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. 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.

§ 55-509.3. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55-509.6 or 55-509.7 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55-509.6 or 55-509.7. *The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator pursuant to § 54.1-2349 or 54.1-2352, as applicable.*

§ 55-509.3:1. Rental of lots.

A. *Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, an association may not condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or impose a charge except as provided in § 55-509.3.*

B. *Except as expressly authorized in this chapter or in the declaration, no association shall:*

1. *Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 as a condition of approval of such a rental during the term of any lease;*

2. *Require the lot owner to use a lease prepared by the association; or*

3. Charge a security deposit from the lot owner or the tenant of the lot owner.

C. The association may require the lot owner to provide the association with a copy of any (i) lease with a tenant or (ii) association document completed by the lot owner or representative that discloses the names and contact information of the tenant and occupants under such lease. The association may require the lot owner to provide the association with the tenant's acknowledgement of and consent to any rules and regulations of the association.

§ 55-509.5. Contents of association disclosure packet; delivery of packet.

A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or his authorized agent, an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

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

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

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement of 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 position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;

7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that relates to the lot being purchased;

8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including the 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 are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;

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 statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to install or use solar energy collection devices on the owner's property;

13. 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;

14. A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet;

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

16. A copy of the fully completed one-page cover sheet developed by the Common Interest Community Board pursuant to § 54.1-2350;

17. Certification that the association has filed with the Common Interest Community Board the annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing; and

18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

B. Failure to receive copies of an association disclosure packet shall not excuse any failure to

comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

C. The disclosure packet shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or his authorized agent may request that the disclosure packet be provided in hard copy or in electronic form. An association or common interest community manager may provide the disclosure packet electronically; however, the seller or his authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or his authorized agent shall continue to have the right to request a hard copy of the disclosure packet in person at the principal place of business of the association. If the seller or his authorized agent requests that the disclosure packet be provided in electronic format, neither the association nor its common interest community manager may require the seller or his authorized agent to pay any fees to use the provider's electronic network or system. *The disclosure packet shall not be delivered in hard copy if the requestor has requested delivery of such disclosure packet electronically. If the disclosure packet is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee of \$50 as provided in § 55-509.6 after the expiration of the 90-day period from the date of issuance of such packet.* If the seller or his authorized agent asks that the disclosure packet be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the disclosure packet in electronic format at no additional charge.

§ 55-509.6. Fees for disclosure packet; professionally managed associations.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55-509.5, and for such other services as set out in this section. The seller or his authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or his authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. ~~If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent.~~

B. A reasonable fee may be charged by the preparer as follows for:

1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed \$100;

2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requestor. *The preparer of the disclosure packet shall provide the disclosure packet directly to the designated persons.* Only one fee shall be charged for the preparation and delivery of the disclosure packet;

3. At the option of the seller or his authorized agent, with the consent of the association or the common interest community manager, expediting the inspection, preparation and delivery of the disclosure packet, an additional expedite fee not to exceed \$50;

4. At the option of the seller or his authorized agent, an additional hard copy of the disclosure packet, a fee not to exceed \$25 per hard copy;

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet; and

6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed \$50.

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516, if not paid at settlement or within 45 days of the delivery of the disclosure packet, whichever occurs first.

429 For purposes of this section, an expedite fee shall only be charged if the inspection and preparation
430 of delivery of the disclosure packet are completed within five business days of the request for a
431 disclosure packet.

432 C. No fees other than those specified in this section, and as limited by this section, shall be charged
433 by the association or its common interest community manager for compliance with the duties and
434 responsibilities of the association under this chapter. No additional fee shall be charged for access to the
435 association's or common interest community manager's website. The association or its common interest
436 community manager shall publish and make available in paper or electronic format, or both, a schedule
437 of the applicable fees so the seller or his authorized agent will know such fees at the time of requesting
438 the packet.

439 D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale
440 of the lot and shall be due and payable out of the settlement proceeds in accordance with this section.
441 *The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement.* The
442 seller shall be responsible for all costs associated with the preparation and delivery of the association
443 disclosure packet, except for the costs of any disclosure packet update or financial update, which costs
444 shall be the responsibility of the requestor, payable at settlement. Neither the association nor its common
445 interest community manager shall require cash, check, certified funds, or credit card payments at the
446 time of the request is made for the association disclosure packet.

447 E. If settlement does not occur within 45 days of the delivery of the disclosure packet, or funds are
448 not collected at settlement and disbursed to the association or the common interest community manager,
449 all fees, including those costs that would have otherwise been the responsibility of the purchaser or
450 settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the
451 lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and
452 collectible as any other assessment in accordance with the provisions of the declaration and § 55-516.
453 The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment
454 is an option offered by the association. The association shall pay the common interest community
455 manager the amount due from the lot owner within 30 days after invoice.

456 F. The maximum allowable fees charged in accordance with this section shall adjust every five years,
457 as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the
458 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
459 by the Bureau of Labor Statistics of the U.S. Department of Labor.

460 G. If an association disclosure packet has been issued for a lot within the preceding 12-month period,
461 a person specified in the written instructions of the seller or his authorized agent, including the seller or
462 his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update.
463 The requestor shall specify whether the disclosure packet update shall be delivered electronically or in
464 hard copy, and shall specify the complete contact information of the parties to whom the update shall be
465 delivered. The disclosure packet update shall be delivered within 10 days of the written request.

466 H. The settlement agent may request a financial update. The requestor shall specify whether the
467 financial update shall be delivered electronically or in hard copy, and shall specify the complete contact
468 information of the parties to whom the update shall be delivered. The financial update shall be delivered
469 within three business days of the written request.

470 I. A reasonable fee for the disclosure packet update or financial update may be charged by the
471 preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may
472 request that the association or the common interest community manager perform an additional inspection
473 of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed
474 \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the
475 sale of the property. *The settlement agent shall escrow a sum sufficient to pay such costs of the seller at*
476 *settlement.* Neither the association nor its common interest community manager, if any, shall require
477 cash, check, certified funds, or credit card payments at the time the request is made for the disclosure
478 packet update. The requestor may request that the specified update be provided in hard copy or in
479 electronic form.

480 J. No association or common interest community manager may require the requestor to request the
481 specified update electronically. The seller or his authorized agent shall continue to have the right to
482 request a hard copy of the specified update in person at the principal place of business of the
483 association. If the requestor asks that the specified update be provided in electronic format, neither the
484 association nor its common interest community manager may require the requester to pay any fees to
485 use the provider's electronic network or system. A copy of the specified update shall be provided to the
486 seller or his authorized agent.

487 K. When an association disclosure packet has been delivered as required by § 55-509.5, the
488 association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the
489 assessment account and the status of the lot with respect to any violation of the declaration, bylaws,
490 rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as

491 of the date of the statement unless the purchaser had actual knowledge that the contents of the
 492 disclosure packet were in error.
 493 L. If the association or its common interest community manager has been requested in writing to
 494 furnish the association disclosure packet required by § 55-509.5, failure to provide the association
 495 disclosure packet substantially in the form provided in this section shall be deemed a waiver of any
 496 claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or
 497 architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer
 498 of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages
 499 sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated
 500 to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association
 501 as to all matters arising after the date of the settlement of the sale.