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**HOUSE BILL NO. 684**

Offered January 13, 2016

Prefiled January 11, 2016

*A BILL to amend and reenact §§ 55-79.87:1, 55-79.97, 55-79.97:1, 55-509.3:1, 55-509.4, 55-509.5, and 55-509.6 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; rental of units; disclosure packets.*

Patron—Peace

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 55-79.87:1, 55-79.97, 55-79.97:1, 55-509.3:1, 55-509.4, 55-509.5, and 55-509.6 of the Code of Virginia are amended and reenacted as follows:**

**§ 55-79.87:1. Rental of units.**

A. Except as expressly authorized in this chapter or in the condominium instruments 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. ~~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;~~

2. 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;~~

3. ~~Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55-79.42:1;~~

4. Require the unit owner to use a lease ~~or addendum to the lease~~ prepared by the unit owners' association; or

5. Charge a ~~security~~ any deposit from the unit owner or the tenant of the unit owner.

~~C.~~ B. 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 ~~and any authorized agent of the unit owner, and vehicle information for such tenant or occupants.~~ 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.

C. ~~The unit owners' association shall have no lawful authority to evict a tenant of any unit owner, and any power of attorney executed by such unit owner authorizing the unit owners' association to so evict shall be void. If the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative with respect to any lease, the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is provided a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § 55-79.77 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.~~

**§ 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

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59 with subsection C, or (c) written notice has been provided by the unit owners' association that a resale  
60 certificate is not available.

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

63 C. The information contained in the resale certificate shall be current as of a date specified on the  
64 resale certificate. A resale certificate update or a financial update may be requested as provided in §  
65 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of  
66 the contract, if the purchaser receives the resale certificate *or is notified that the resale certificate will*  
67 *not be available* on or before the date that the purchaser signs the contract; (ii) within three days after  
68 receiving the resale certificate if the resale certificate *or notice that the resale certificate will not be*  
69 *available* is hand delivered, delivered by electronic means, or delivered by a commercial overnight  
70 delivery service or the United Parcel States Postal Service, and a receipt obtained; or (iii) within six  
71 days after the postmark date if the resale certificate *or notice that the resale certificate will not be*  
72 *available* is sent to the purchaser by United States mail.

73 Notice of cancellation shall be provided to the unit owner or his agent by one of the following  
74 methods:

75 a. Hand delivery;

76 b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which  
77 may be either a United States postal certificate of mailing or a certificate of service prepared by the  
78 sender confirming such mailing;

79 c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may  
80 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate  
81 of service prepared by the sender confirming the electronic delivery; or

82 d. Overnight delivery using a commercial service or the United States Postal Service.

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

86 A resale certificate shall include the following:

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

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

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

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

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

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

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

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

112 9. A statement that any improvements or alterations made to the unit, or the limited common  
113 elements assigned thereto, are or are not in violation of the condominium instruments;

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

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

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

120 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~~ *the seller's* authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or ~~his~~ *the seller's* 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~~ *the seller's* 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~~ *the seller's* authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or ~~his~~ *the seller's* 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~~ *the seller's* 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~~ *the seller's* 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~~ *the seller's* authorized agent asks that the resale certificate be provided in electronic format, the seller or ~~his~~ *the seller's* authorized agent may 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~~ *the seller's* authorized agent to pay the fee specified in § 55-79.97:1. The preparer of the resale ~~packet~~ *certificate* shall provide such resale ~~packet~~ *certificate* 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 and provide the resale certificate to the purchaser.

H. For purposes of this chapter:

"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section. The unit owners association shall provide the resale certificate to the requestor in accordance with § 55-79.97.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

182 *"Receives, received, or receiving" the resale certificate means that the purchaser or purchaser's*  
183 *authorized agent has received the resale certificate by one of the methods specified in this section.*

184 *"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract*  
185 *for purchase and sale of residential real property or other writing designating such agent. Unless*  
186 *otherwise provided in the ratified real estate contract, delivery to the purchaser's authorized agent shall*  
187 *require delivery to such agent and not to a person other than such agent. Delivery of the resale*  
188 *certificate may be made by the unit owner or the seller's authorized agent.*

189 *If the unit is governed by more than one association, the purchaser's right of cancellation may be*  
190 *exercised within the required time frames following delivery of the last resale certificate.*

191 **§ 55-79.97:1. Fees for resale certificate.**

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

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

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

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

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

208 4. At the option of the seller or ~~his~~ *the seller's* authorized agent, an additional hard copy of the  
209 resale certificate, a fee not to exceed \$25 per hard copy;

210 5. At the option of the seller or ~~his~~ *the seller's* authorized agent, a fee not to exceed an amount equal  
211 to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight  
212 delivery of the resale certificate; and

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

216 Neither the unit owners' association nor its common interest community manager shall require cash,  
217 check, certified funds, or credit card payments at the time the request for the resale certificate is made.  
218 The resale certificate shall state that all fees and costs for the resale certificate shall be the personal  
219 obligation of the unit owner and shall be an assessment against the unit and collectible as any other  
220 assessment in accordance with the provisions of the condominium instruments and § 55-79.83, if not  
221 paid at settlement or within 45 60 days of the delivery of the resale certificate, whichever occurs first.

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

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

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

240 E. If settlement does not occur within 45 60 days of the delivery of the resale certificate, or funds  
241 are not collected at settlement and disbursed to the unit owners' association or the common interest  
242 community manager, all fees, including those costs that would have otherwise been the responsibility of  
243 the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale

certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, 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~~ *the seller's* authorized agent, including the seller or ~~his~~ *the seller's* authorized agent or the purchaser or ~~his~~ *the purchaser's* 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~~ *the purchaser's* 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~~ *the seller's* 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 requester 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~~ *the seller's* 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.

#### **§ 55-509.3:1. 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. ~~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;~~

2. 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;

305 ~~2.~~ 3. Charge an annual or monthly rental fee or any other fee not expressly authorized in  
306 § 55-509.3;

307 4. Require the lot owner to use a lease or an addendum to the lease prepared by the association; or

308 ~~3.~~ 5. Charge a security any deposit from the lot owner or the tenant of the lot owner.

309 C.B. The association may require the lot owner to provide the association with a copy of any (i)  
310 lease with a tenant or (ii) association document completed by the lot owner or representative that  
311 discloses the names and contact information of the tenant and occupants under such lease, and any  
312 authorized agent of the lot owner, and vehicle information for such tenant or occupants. The association  
313 may require the lot owner to provide the association with the tenant's acknowledgement of and consent  
314 to any rules and regulations of the association.

315 C. The association shall have no lawful authority to evict a tenant of any lot owner and any power  
316 of attorney executed by the lot owner authorizing the association to so evict shall be void. If the lot  
317 owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized  
318 representative with respect to any lease, the association shall recognize such representation without a  
319 formal power of attorney provided that the association is provided a written authorization signed by the  
320 lot owner designating such representative. Notwithstanding the foregoing, the requirements of § 55-515  
321 and the declaration shall be satisfied before any such representative may exercise a vote on behalf of a  
322 lot owner as a proxy.

323 **§ 55-509.4. Contract disclosure statement; right of cancellation.**

324 A. Subject to the provisions of subsection A of § 55-509.10, a person owner selling a lot shall  
325 disclose in the contract that (i) the lot is located within a development that is subject to the Virginia  
326 Property Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the  
327 property owners' association an association disclosure packet and provide it to the purchaser; (iii) the  
328 purchaser may cancel the contract within three days after receiving the association disclosure packet or  
329 being notified that the association disclosure packet will not be available; (iv) if the purchaser has  
330 received the association disclosure packet, the purchaser has a right to request an update of such  
331 disclosure packet in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as  
332 appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the  
333 contract are waived conclusively if not exercised before settlement.

334 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if  
335 (a) a current annual report has not been filed by the association with either the State Corporation  
336 Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to  
337 § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and  
338 no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c)  
339 written notice has been provided by the association that a packet is not available.

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

342 C. The information contained in the association disclosure packet shall be current as of a date  
343 specified on the association disclosure packet prepared in accordance with this section; however, a  
344 disclosure packet update or financial update may be requested in accordance with subsection G of  
345 § 55-509.6 or subsection C of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i)  
346 within three days after the date of the contract, if on or before the date that the purchaser signs the  
347 contract, the purchaser receives the association disclosure packet or is notified that the association  
348 disclosure packet will not be available; (ii) within three days after receiving the association disclosure  
349 packet if the association disclosure packet or notice that the association disclosure packet will not be  
350 available is hand delivered, delivered by electronic means, or delivered by a commercial overnight  
351 delivery service or the United Parcel States Postal Service, and a receipt obtained; or (iii) within six  
352 days after the postmark date if the association disclosure packet or notice that the association disclosure  
353 packet will not be available is sent to the purchaser by United States mail. The purchaser may also  
354 cancel the contract at any time prior to settlement if the purchaser has not been notified that the  
355 association disclosure packet will not be available and the association disclosure packet is not delivered  
356 to the purchaser.

357 Notice of cancellation shall be provided to the lot owner or his agent by one of the following  
358 methods:

359 1. Hand delivery;

360 2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which  
361 may be either a United States postal certificate of mailing or a certificate of service prepared by the  
362 sender confirming such mailing;

363 3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may  
364 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate  
365 of service prepared by the sender confirming the electronic delivery; or

366 4. 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 seller shall cause any deposit to be returned promptly to the purchaser.

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

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

F. Except as expressly provided in this chapter, the provisions of this section and § 55-509.5 may not be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

G. For purposes of this chapter:

*"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section. The association shall provide the disclosure packet to the requester in accordance with § 55-509.5.*

*"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.*

*"Receives, received, or receiving" the disclosure packet means that the purchaser or purchaser's authorized agent has received the disclosure packet by one of the methods specified in this section.*

*"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent. Unless otherwise provided in the ratified real estate contract, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the disclosure packet may be made by the lot owner or the lot owner's authorized agent.*

*If the lot is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last disclosure packet.*

**§ 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 the seller's 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

428 place a sign on the owner's lot advertising the lot for sale;

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

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

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

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

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

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

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

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

448 B. Failure to receive copies of an association disclosure packet shall not excuse any failure to  
449 comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

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

455 D. The seller or ~~his~~ *the seller's* authorized agent may request that the disclosure packet be provided  
456 in hard copy or in electronic form. An association or common interest community manager may provide  
457 the disclosure packet electronically; however, the seller or ~~his~~ *the seller's* authorized agent shall have the  
458 right to request that the association disclosure packet be provided in hard copy. The seller or ~~his~~ *the*  
459 *seller's* authorized agent shall continue to have the right to request a hard copy of the disclosure packet  
460 in person at the principal place of business of the association. If the seller or ~~his~~ *the seller's* authorized  
461 agent requests that the disclosure packet be provided in electronic format, neither the association nor its  
462 common interest community manager may require the seller or ~~his~~ *the seller's* authorized agent to pay  
463 any fees to use the provider's electronic network or system. The disclosure packet shall not be delivered  
464 in hard copy if the requestor has requested delivery of such disclosure packet electronically. If the  
465 disclosure packet is provided electronically by a website link, the preparer shall not cause the website  
466 link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the  
467 subsequent 12-month period, except that the preparer may charge an update fee of \$50 as provided in §  
468 55-509.6 after the expiration of the 90-day period from the date of issuance of such packet. ~~If the seller~~  
469 ~~or his authorized agent asks that the disclosure packet be provided in electronic format, the seller or his~~  
470 ~~authorized agent may designate no more than two additional recipients to receive the disclosure packet~~  
471 ~~in electronic format at no additional charge. If the seller or the seller's authorized agent asks that the~~  
472 ~~disclosure packet be provided in electronic format, the seller or the seller's authorized agent may~~  
473 ~~request that an electronic copy be provided to each of the following named in the request: the seller, the~~  
474 ~~seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other~~  
475 ~~person designated by the requestor. If so requested, the property owners' association or its common~~  
476 ~~interest community manager may require the seller or the seller's authorized agent to pay the fee~~  
477 ~~specified in § 55-509.6. The preparer of the disclosure packet shall provide such disclosure packet~~  
478 ~~directly to the designated persons.~~

479 **§ 55-509.6. Fees for disclosure packet; professionally managed associations.**

480 A. A professionally managed association or its common interest community manager may charge  
481 certain fees as authorized by this section for the inspection of the property, the preparation and issuance  
482 of the disclosure packet required by § 55-509.5, and for such other services as set out in this section.  
483 The seller or ~~his~~ *the seller's* authorized agent shall specify in writing whether the disclosure packet shall  
484 be delivered electronically or in hard copy, at the option of the seller or ~~his~~ *the seller's* authorized agent,  
485 and shall specify the complete contact information for the parties to whom the disclosure packet shall be  
486 delivered.

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

488 1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and  
489 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~~ *the seller's* 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~~ *the seller's* 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~~ *the seller's* 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 60 days of the delivery of the disclosure packet, whichever occurs first.

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

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

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

E. If settlement does not occur within 45 60 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, 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 an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or ~~his~~ *the seller's* authorized agent, including the seller or ~~his~~ *the seller's* authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties

551 to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days  
552 of the written request.

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

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

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

574 K. When an association disclosure packet has been delivered as required by § 55-509.5, the  
575 association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the  
576 assessment account and the status of the lot with respect to any violation of the declaration, bylaws,  
577 rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as  
578 of the date of the statement unless the purchaser had actual knowledge that the contents of the  
579 disclosure packet were in error.

580 L. If the association or its common interest community manager has been requested in writing to  
581 furnish the association disclosure packet required by § 55-509.5, failure to provide the association  
582 disclosure packet substantially in the form provided in this section shall be deemed a waiver of any  
583 claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or  
584 architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer  
585 of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages  
586 sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated  
587 to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association  
588 as to all matters arising after the date of the settlement of the sale.