

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 133

An Act to amend and reenact § 55-375 of the Code of Virginia, relating to the Virginia Real Estate Time-Share Act; Common Interest Community Board; surety bond or letter of credit in lieu of escrow deposit.

[S 443]

Approved March 2, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 55-375 of the Code of Virginia is amended and reenacted as follows:

§ 55-375. Escrow of deposits; use of corporate surety bond or irrevocable letter of credit.

A. Any deposit made in connection with the purchase or reservation of a product shall be held in escrow. ~~All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose. Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia.~~ All deposits shall be held in escrow until (i) delivered to the developer upon expiration of the purchaser's cancellation period provided the purchaser's right of cancellation has not been exercised, (ii) delivered to the developer because of the purchaser's default under a contract to purchase a time-share, or (iii) refunded to the purchaser. ~~Failure to establish escrow accounts or to make the deposits as required by this section is prima facie evidence of willful violation of this section. Such funds shall be deposited in a separate account designated for this purpose that is federally insured and located in Virginia; except where such deposits are being held by a real estate broker or attorney licensed under the laws of the Commonwealth, such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the developer.~~

B. In lieu of escrowing deposits as provided in subsection A, the developer of a time-share project consisting of more than 25 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth in subsection C below; or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth in subsection D.

The surety bond or letter of credit shall be maintained until (i) the expiration of the purchaser's cancellation period, (ii) the purchaser's default under a purchase contract for the time-share estate entitling the developer to retain the deposit, or (iii) the refund of the deposit to the time-share purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The developer shall file the bond with the Common Interest Community Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the developer or, if the total amount of the deposits accepted by the developer under this chapter exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. More than \$10,000 but not more than \$75,000, the blanket bond shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket bond shall be \$1 million; and
5. \$1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for the use and benefit of every person protected under this chapter. The developer shall file the letter of credit with the Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the developer or, if the total amount of the deposits accepted by the developer under this chapter exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. More than \$10,000 but not more than \$75,000, the blanket letter of credit shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket letter of credit shall be \$1 million; and
5. \$1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a developer maintains in any calendar year, the total amount of deposits considered held by the developer shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with

the amount of deposits held as of May 31.

E. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow *or protected by a surety bond or letter of credit* after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the developer reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in ~~boldfaced~~ *boldface* type of a minimum size of 10 points.

C. There shall be filed with the Common Interest Community Board a bond, letter of credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection A, in favor of the time-share purchasers. The bond, letter of credit, or cash shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond, letter of credit, or cash shall be maintained for so long as the developer offers time-shares in the project. The bond shall be with a surety company authorized to do business in Virginia.