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SENATE BILL NO. 722

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 29, 2018)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 55-79.74:1, 55-509.3:2, and 55-510 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; access to association books and records; duty to redact.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.74:1, 55-509.3:2, and 55-510 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.74:1. Books, minutes and records; inspection.

A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and ~~D~~ E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive organ;
5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive organ held pursuant to subsection C of § 55-79.75;
8. Documentation, correspondence or management or executive organ reports compiled for or on behalf of the unit owners' association or the executive organ by its agents or committees for consideration by the executive organ in executive session; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. *Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the*

60 *association in responding to the request for the books and records and review for redaction of the same.*
61 *E. Prior to providing copies of any books and records, the unit owners' association may impose and*
62 *collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs*
63 *thereof. Charges may be imposed only in accordance with a cost schedule adopted by the executive*
64 *organ in accordance with this subsection. The cost schedule shall (i) specify the charges for materials*
65 *and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting*
66 *unit owner at the time the request is made.*

67 **§ 55-509.3:2. Statement of lot owner rights.**

68 Every lot owner who is a member in good standing of a property owners' association shall have the
69 following rights:

70 1. The right of access to all books and records kept by or on behalf of the association according to
71 and subject to the provisions of § 55-510, including records of all financial transactions;

72 2. The right to cast a vote on any matter requiring a vote by the association's membership in
73 proportion to the lot owner's ownership interest, except to the extent that the declaration provides
74 otherwise;

75 3. The right to have notice of any meeting of the board of directors, to make a record of such
76 meetings by audio or visual means, and to participate in such meeting in accordance with the provisions
77 of subsection F G of § 55-510 and § 55-510.1;

78 4. The right to have (i) notice of any proceeding conducted by the board of directors or other
79 tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the
80 association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as
81 provided in § 55-513, and the right of due process in the conduct of that hearing; and

82 5. The right to serve on the board of directors if duly elected and a member in good standing of the
83 association, except to the extent the declaration provides otherwise.

84 The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the
85 provisions of § 55-515.

86 **§ 55-510. Access to association records; association meetings; notice.**

87 A. The association shall keep detailed records of receipts and expenditures affecting the operation
88 and administration of the association. All financial books and records shall be kept in accordance with
89 generally accepted accounting practices.

90 B. Subject to the provisions of subsection C and so long as the request is for a proper purpose
91 related to his membership in the association, all books and records kept by or on behalf of the
92 association, shall be available for examination and copying by a member in good standing or his
93 authorized agent including but not limited to:

94 1. The association's membership list and addresses, which shall not be used for purposes of pecuniary
95 gain or commercial solicitation; and

96 2. The actual salary of the six highest compensated employees of the association earning over
97 \$75,000 and aggregate salary information of all other employees of the association; however, individual
98 salary information shall not be available for examination and copying during the declarant control
99 period.

100 Notwithstanding any provision of law to the contrary, this right of examination shall exist without
101 reference to the duration of membership and may be exercised (i) only during reasonable business hours
102 or at a mutually convenient time and location and (ii) upon five business days' written notice for an
103 association managed by a common interest community manager and 10 business days' written notice for a
104 self-managed association, which notice reasonably identifies the purpose for the request and the
105 specific books and records of the association requested.

106 C. Books and records kept by or on behalf of an association may be withheld from inspection and
107 copying to the extent that they concern:

108 1. Personnel matters relating to specific, identified persons or a person's medical records;

109 2. Contracts, leases, and other commercial transactions to purchase or provide goods or services,
110 currently in or under negotiation;

111 3. Pending or probable litigation. Probable litigation means those instances where there has been a
112 specific threat of litigation from a party or the legal counsel of a party;

113 4. Matters involving state or local administrative or other formal proceedings before a government
114 tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to
115 § 55-513;

116 5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by
117 the attorney-client privilege or the attorney work product doctrine;

118 6. Disclosure of information in violation of law;

119 7. Meeting minutes or other confidential records of an executive session of the board of directors
120 held in accordance with subsection C of § 55-510.1;

121 8. Documentation, correspondence or management or board reports compiled for or on behalf of the

association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

F. Notwithstanding the provisions of subsections B and C, all books and records of the association, including individual salary information for all employees and payments to independent contractors, shall be available for examination and copying upon request by a member of the board of directors in the discharge of his duties as a director.

G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the member. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.