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HOUSE BILL NO. 1340

Offered January 8, 2020

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A *BILL to amend and reenact §§ 54.1-2345, 55.1-1602, 55.1-1805, 55.1-1808, 55.1-1810, 55.1-1904, 55.1-1911, 55.1-1919, and 55.1-1937 of the Code of Virginia, relating to recodification of Title 55; corrections.*

Patron—Leftwich

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2345, 55.1-1602, 55.1-1805, 55.1-1808, 55.1-1810, 55.1-1904, 55.1-1911, 55.1-1919, and 55.1-1937 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2345. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association" includes condominium, cooperative, or property owners' associations.

"Board" means the Common Interest Community Board.

"Common interest community" means real estate subject to a declaration ~~with respect~~ *containing lots, at least some of which are residential or occupied for recreational purposes, and common areas* to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses, provided that for the purposes of this chapter only, a common interest community does not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.) or any additional land that is a part of such registration. "Common interest community" does not include an arrangement described in § 54.1-2345.1.

"Common interest community manager" means a person or business entity, including a partnership, association, corporation, or limited liability company, that, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative.

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

§ 55.1-1602. Certain covenants of lessee "to pay the rent" and "to pay the taxes."

In a lease, (i) a covenant by the lessee "to pay the rent" shall have the effect of a covenant that the rent reserved by the lease shall be paid to the lessor, or those entitled under the lessor, in the manner stated in the ~~deed~~ *lease*, and (ii) a covenant by the lessee "to pay the taxes" shall have the effect of a covenant that all the taxes, levies, and assessments upon the demised premises, or upon the lessor on

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59 account thereof, shall be paid by the lessee or those claiming under the lessee.

60 **§ 55.1-1805. Association charges.**

61 Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no
62 association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the
63 charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to
64 the provisions set out in § 55.1-1810 or 55.1-1811 that is not expressly authorized in those sections.
65 Nothing in this chapter shall be construed to authorize an association or common interest community
66 manager to charge an inspection fee for an unimproved or improved lot except as provided in
67 § 55.1-1810 or 55.1-1811. The Common Interest Community Board may assess a monetary penalty for a
68 violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest
69 community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the
70 violator *an association* pursuant to § 54.1-2349 or 54.1-2352, as applicable.

71 **§ 55.1-1808. Contract disclosure statement; right of cancellation.**

72 A. For purposes of this article, unless the context requires a different meaning:

73 "Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized
74 agent by one of the methods specified in this section.

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

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

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

81 B. Subject to the provisions of subsection A of § 55.1-1814, an owner selling a lot shall disclose in
82 the contract that (i) the lot is located within a development that is subject to the Property Owners'
83 Association Act (§ 55.1-1800 et seq.); (ii) the Property Owners' Association Act (§ 55.1-1800 et seq.)
84 requires the seller to obtain from the property owners' association an association disclosure packet and
85 provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving
86 the association disclosure packet or being notified that the association disclosure packet will not be
87 available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to
88 request an update of such disclosure packet in accordance with subsection H G of § 55.1-1810 or
89 subsection D of § 55.1-1811, as appropriate; and (v) the right to receive the association disclosure packet
90 and the right to cancel the contract are waived conclusively if not exercised before settlement.

91 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if
92 (a) a current annual report has not been filed by the association with either the State Corporation
93 Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-1835,
94 (b) the seller has made a written request to the association that the packet be provided and no such
95 packet has been received within 14 days in accordance with subsection A of § 55.1-1809, or (c) written
96 notice has been provided by the association that a packet is not available.

97 C. If the contract does not contain the disclosure required by subsection B, the purchaser's sole
98 remedy is to cancel the contract prior to settlement.

99 D. The information contained in the association disclosure packet shall be current as of a date
100 specified on the association disclosure packet prepared in accordance with this section; however, a
101 disclosure packet update or financial update may be requested in accordance with subsection G or H of
102 § 55.1-1810 or subsection D or E of § 55.1-1811, as appropriate. The purchaser may cancel the contract
103 (i) within three days after the date of the contract if, on or before the date that the purchaser signs the
104 contract, the purchaser receives the association disclosure packet, is notified that the association
105 disclosure packet will not be available, or receives an association disclosure packet that is not in
106 conformity with the provisions of § 55.1-1809; (ii) within three days after receiving the association
107 disclosure packet if the association disclosure packet, notice that the association disclosure packet will
108 not be available, or an association disclosure packet that is not in conformity with the provisions of
109 § 55.1-1809 is hand delivered, delivered by electronic means, or delivered by a commercial overnight
110 delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days
111 after the postmark date if the association disclosure packet, notice that the association disclosure packet
112 will not be available, or an association disclosure packet that is not in conformity with the provisions of
113 § 55.1-1809 is sent to the purchaser by United States mail. The purchaser also may cancel the contract
114 at any time prior to settlement if the purchaser has not been notified that the association disclosure
115 packet will not be available and the association disclosure packet is not delivered to the purchaser.

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

118 1. Hand delivery;

119 2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing in
120 the form of a certificate of service prepared by the sender confirming such mailing;

3. Electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be in the form of 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

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.

E. Whenever any contract is canceled based on a failure to comply with subsection B or D or pursuant to subsection C, 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.

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

G. Except as expressly provided in this chapter, the provisions of this section and § 55.1-1809 may not be varied by agreement, and the rights conferred by this section and § 55.1-1809 may not be waived.

H. Unless otherwise provided in the ratified real estate contract or other writing, 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.

I. 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 or resale certificate.

§ 55.1-1810. 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 § 55.1-1809, and for such other services as set out in this section. The seller or the seller's 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 the seller's authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

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

1. For 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. For 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 requester. 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 the seller's authorized agent, with the consent of the association or the common interest community manager, for 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 the seller's authorized agent, for 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 the seller's authorized agent, for hand delivery or overnight delivery of the overnight disclosure packet, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service; 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 § 55.1-1833, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever occurs first.

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

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

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

197 E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or funds are
198 not collected at settlement and disbursed to the association or the common interest community manager,
199 all fees, including those costs that would have otherwise been the responsibility of the purchaser or
200 settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the
201 lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and
202 collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1834.
203 The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment
204 is an option offered by the association. The association shall pay the common interest community
205 manager the amount due from the lot owner within 30 days after invoice.

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

210 G. If an association disclosure packet has been issued for a lot within the preceding 12-month period,
211 a person specified in the written instructions of the seller or the seller's authorized agent, including the
212 seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure
213 packet update. The requester shall specify whether the disclosure packet update shall be delivered
214 electronically or in hard copy and shall specify the complete contact information of the parties to whom
215 the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the
216 written request.

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

221 I. A reasonable fee for the disclosure packet update or financial update may be charged by the
222 preparer not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the
223 requester may request that the association or the common interest community manager perform an
224 additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for
225 a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time
226 settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay
227 such costs of the seller at settlement. Neither the association nor its common interest community
228 manager, if any, shall require cash, check, certified funds, or credit card payments at the time the
229 request is made for the disclosure packet update. The requester may request that the specified update be
230 provided in hard copy or in electronic form.

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

238 K. When an association disclosure packet has been delivered as required by § 55.1-1809, the
239 association shall, as to the purchaser, be bound by the statements set forth in the disclosure packet as to
240 the status of the assessment account and the status of the lot with respect to any violation of the
241 declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any,
242 of the association as of the date of the statement unless the purchaser had actual knowledge that the
243 contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55.1-1809, failure to provide the association disclosure packet 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 lot. The preparer of the association disclosure packet 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 declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the association disclosure packet within 14 days against any (i) property owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order *against an association* pursuant to § 54.1-2349 ~~or~~ 54.1-2352, as applicable.

N. No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report and fee with the Common Interest Community Board pursuant to § 55.1-1835, (iii) is current in paying any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5, and (iv) provides the disclosure packet electronically if so requested by the requester.

§ 55.1-1904. 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 § 55.1-1964, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55.1-1992. 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 *against an association* pursuant to § 54.1-2349 ~~or~~ 54.1-2352, as applicable.

§ 55.1-1911. Recordation of condominium instruments.

All amendments and certifications of condominium instruments shall set forth the name of the county or city in which the condominium is located and the deed book and page number where the first page of the declaration is recorded. All condominium instruments and all amendments and certifications of such condominium instruments shall be recorded in every county and city in which any portion of the condominium is located. The condominium instruments, amendments, and certifications shall set forth the name of the condominium and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk.

§ 55.1-1919. Assignments of limited common elements; conversion to common element.

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected by such amendment as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer as the condominium instruments may specify. The officer to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by all of the unit owners concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only pursuant to subdivision A 6 of § 55.1-1916. The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by all of the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded, and the recordation of such amendment shall be conclusive evidence that the method prescribed pursuant to subdivision A 6 of § 55.1-1916 was adhered to. A copy

305 of the amendment shall be delivered to the unit owners of the units concerned. If executed by the
306 declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not
307 prepared by an officer of the unit owners' association.

308 D. If the declarant does not prepare and record an amendment to the declaration to effect the
309 assignment of common elements as limited common elements in accordance with rights reserved in the
310 condominium instruments, but has reflected an intention to make such assignments in deeds conveying
311 units, then the principal officer of the unit owners' association may prepare, execute, and record such an
312 amendment at any time after the declarant ceases to be a unit owner.

313 E. The declarant may unilaterally record an amendment to the declaration converting a limited
314 common element appurtenant to a unit owned by the declarant into a common element as long as the
315 declarant continues to own the unit.

316 **§ 55.1-1937. Termination of condominium.**

317 A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the
318 condominium. An instrument terminating a condominium signed by the declarant is effective upon
319 recordation of such instrument. But this section shall not be construed to nullify, limit, or otherwise
320 affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the
321 right hereby conferred.

322 B. Except in the case of a taking of all the units by eminent domain, if any of the units in the
323 condominium is restricted exclusively to residential use and there is any unit owner other than the
324 declarant, the condominium may be terminated only by the agreement of unit owners of units to which
325 four-fifths of the votes in the unit owners' association appertain, or such larger majority as the
326 condominium instruments may specify. If none of the units in the condominium is restricted exclusively
327 to residential use, the condominium instruments may specify a majority smaller than the minimum
328 specified in this subsection.

329 C. Agreement of the required majority of unit owners to termination of the condominium shall be
330 evidenced by their execution of a termination agreement, or ratifications of such agreement, and such
331 agreement is effective when a copy of the termination agreement is recorded together with a
332 certification, signed by the principal officer of the unit owners' association or by such other officer as
333 the condominium instruments may specify, that the requisite majority of the unit owners signed the
334 termination agreement or ratifications. Unless the termination agreement otherwise provides, prior to
335 recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium
336 may be revoked only with the approval of unit owners of units to which a majority of the votes in the
337 unit owners' association appertain. The termination agreement shall specify a date after which the
338 termination agreement is void if the termination agreement is not recorded. For the purposes of this
339 section, an instrument terminating a condominium and any ratification of such instrument shall be
340 deemed a condominium instrument subject to the provisions of § 55.1-1911.

341 D. In the case of a condominium that contains only units having horizontal boundaries described in
342 the condominium instruments, a termination agreement may provide that all of the common elements
343 and units of the condominium shall be sold following termination. If, pursuant to the termination
344 agreement, any property in the condominium is sold following termination, the termination agreement
345 shall set forth the minimum terms of the sale.

346 E. In the case of a condominium that contains any units not having horizontal boundaries described
347 in the condominium instruments, a termination agreement may provide for sale of the common elements.
348 The termination agreement may not require that the units be sold following termination, unless the
349 condominium instruments as originally recorded provide otherwise or all the unit owners consent to the
350 sale. In the case of a master condominium that contains a unit that is a part of another condominium, a
351 termination agreement for the master condominium shall not terminate the other condominium.

352 F. On behalf of the unit owners, the unit owners' association may contract for the disposition of
353 property in the condominium, but the contract shall not be binding on the unit owners until approved
354 pursuant to subsections B and C. If the termination agreement requires that any property in the
355 condominium be sold following termination, title to the property, upon termination, shall vest in the unit
356 owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners'
357 association shall have powers necessary and appropriate to effect the sale. Until the termination has been
358 concluded and the proceeds have been distributed, the unit owners' association shall continue in
359 existence with all the powers the unit owners' association had before termination. Proceeds of the sale
360 shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the
361 respective interests of the unit owners as provided in subsection I. Unless otherwise specified in the
362 termination agreement, for as long as the unit owners' association holds title to the property, each unit
363 owner or his successor in interest shall have an exclusive right to occupancy of the portion of the
364 property that formerly constituted his unit. During the period of occupancy by the unit owner or his
365 successor in interest, each unit owner or his successor in interest shall remain liable for any assessment
366 or other obligation imposed on the unit owner by this chapter or the condominium instruments.

G. If the property that constitutes the condominium is not sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 2, the respective interests of the unit owners shall be the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which one quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

2. If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value of such unit or limited common element before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

J. Except as provided in subsection K, foreclosure of any mortgage, deed of trust, or other lien, or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

~~L. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.~~