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HOUSE BILL NO. 1842

House Amendments in [] - January 18, 2021

A BILL to amend and reenact §§ 55.1-1819 and 55.1-1959 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55.1-1819.1 and 55.1-1960.1, relating to the Property Owners' Association Act; the Condominium Act; rulemaking authority of property owners' associations and unit owners' associations; smoking.

Patron Prior to Engrossment—Delegate Keam

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1819 and 55.1-1959 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55.1-1819.1 and 55.1-1960.1 as follows:

§ 55.1-1819. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. ~~A majority of votes cast, in person or by proxy, at~~ At a special meeting of the association convened in accordance with the provisions of the association's bylaws ~~and called for that purpose shall, a majority of votes cast at such meeting may~~ repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court ~~may~~ shall award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant to such declaration expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant, and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55.1-1815. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature, and shall be treated as an assessment against the member's lot for the purposes of § 55.1-1833. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date an action is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, the association shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the lot

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HB1842E

owner to abate or remedy the violation.

G. In any action filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

§ 55.1-1819.1. Limitation of smoking in development.

Except to the extent that the declaration provides otherwise, the board of directors may establish reasonable rules that restrict smoking in the development, including rules that prohibit smoking in the common areas. For developments that include attached private dwelling units, such rules may prohibit smoking within such dwelling units. Rules adopted pursuant to this section may be enforced in accordance with § 55.1-1819.

§ 55.1-1959. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules and regulations.

A. *Except as otherwise provided in this chapter, the executive board shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common elements and with respect to such other areas of responsibility assigned to the unit owners' association by the condominium instruments, except where expressly reserved by the condominium instruments to the unit owners. Rules and regulations may be adopted by regulation and shall be reasonably published or distributed to the unit owners. [As At] a special meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments, a majority of the votes cast at such meeting may repeal or amend any rule or regulation adopted by the executive board. Rules and regulations may be enforced by any method authorized by this chapter.*

B. The unit owners' association shall have the power, to the extent the condominium instruments or the condominium's rules and regulations expressly provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension does not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55.1-1949. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive board or such other tribunal as the condominium instruments or its adopted rules and regulations specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949.

D. The amount of any charges assessed shall not exceed \$50 for a single offense, or \$10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55.1-1966. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The unit owners' association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or the condominium's adopted rules and regulations.

F. After the date an action is filed in the general district or circuit court by (i) the unit owners' association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

If the court rules in favor of the unit owners' association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any action filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the sworn affidavit of the unit owners' association.

G. This section shall not be construed to prohibit the grant by the condominium instruments of other powers and responsibilities to the unit owners' association or its executive board.

§ 55.1-1960.1. Limitation of smoking in condominium.

Except to the extent that the condominium instruments provide otherwise, the executive board may establish reasonable rules that restrict smoking in the condominium, including rules that prohibit

121 *smoking in the common elements and within units. Rules adopted pursuant to this section may be*
122 *enforced in accordance with § 55.1-1959.*

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HB1842E