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HOUSE BILL NO. 1519

Offered January 11, 2023

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A BILL to amend and reenact §§ 55.1-1803, 55.1-1804, 55.1-1943, 55.1-2136, and 55.1-2209 of the Code of Virginia, relating to common interest communities; professionally managed associations.

Patrons—Adams, D.M., Coyner, Clark, Guzman, Jenkins, Kory, Maldonado, Rasoul and Shin

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1803, 55.1-1804, 55.1-1943, 55.1-2136, and 55.1-2209 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1803. Limitation on certain contracts and leases by declarant.

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions of such contract or lease. *Management contracts entered into prior to the expiration of the period of declarant control contemplated by the declaration shall abide by the notice requirements set forth in § 55.1-1804.*

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

D. This section shall be strictly construed to protect the rights of the lot owners.

§ 55.1-1804. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors other than the declarant are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including minute books and rules and regulations and all amendments to such rules and regulations that may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the lot owners, not to exceed 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies that are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements, including stormwater facilities; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the association property; (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors; and (xi) an inventory and description of stormwater facilities located on the common area or which otherwise serve the development and for which the association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.

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59 The requirement for delivery of stormwater facility information required by clause (xi) shall be
60 deemed satisfied by delivery to the association of a final site plan or final construction drawings
61 showing stormwater facilities as approved by a local government jurisdiction and applicable recorded
62 easements or agreements, if any, containing requirements for the maintenance, repair, or replacement of
63 the stormwater facilities.

64 If the association is managed by a common interest community manager in which the declarant, or
65 its principals, has no pecuniary interest or management role, then such common interest community
66 manager shall have the responsibility to provide the documents and information required by clauses (i),
67 (ii), (vi), and (viii). *If the association is managed by a common interest community manager subject to a*
68 *contract that renews automatically, such manager shall provide the association with notice of such*
69 *renewal at least 30 days but not more than 90 days prior to the date that such contract will*
70 *automatically renew. Such notice shall be made prior to every renewal period.*

71 **§ 55.1-1943. Control of condominium by declarant.**

72 A. The condominium instruments may authorize the declarant, or a managing agent or some other
73 person selected or to be selected by the declarant, to appoint and remove some or all of the officers of
74 the unit owners' association or its executive board, or to exercise powers and responsibilities otherwise
75 assigned by the condominium instruments and by this chapter to the unit owners' association, the
76 officers, or the executive board. The declarant, managing agent, or other person selected by the declarant
77 to so appoint and remove officers or the executive board or to exercise such powers and responsibilities
78 otherwise assigned to the unit owners' association, the officers, or the executive board shall be subject to
79 liability as fiduciaries of the unit owners for their action or omissions during the period of declarant
80 control as specified in the condominium instruments or, if not so specified, within such period as
81 defined in this section. But no amendment to the condominium instruments shall increase the scope of
82 such authorization if there is any unit owner other than the declarant, and no such authorization shall be
83 valid after the time limit set by the condominium instruments or after units to which three-fourths of the
84 undivided interests in the common elements appertain have been conveyed, whichever occurs first. For
85 the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be
86 based upon the total undivided interests assigned or to be assigned to all units registered with the
87 Common Interest Community Board pursuant to subsection B of § 55.1-1978 and described pursuant to
88 subdivision A 4, B 2, or C 8 of § 55.1-1916.

89 B. The time limit initially set by the condominium instruments shall not exceed five years in the case
90 of an expandable condominium; three years in the case of a condominium other than an expandable
91 condominium, containing any convertible land; or two years in the case of any other condominium.
92 Such time period shall begin upon settlement of the first unit to be sold in any portion of the
93 condominium.

94 Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for
95 a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the
96 condominium or after units to which three-fourths of the undivided interests in the common elements
97 appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to
98 the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of
99 such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant;
100 and (iii) at such special meeting, there is an election of a warranty review committee consisting of no
101 fewer than three persons unaffiliated with the declarant.

102 Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special
103 meeting made in accordance with § 55.1-1949 a written statement in a form provided by the Common
104 Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a
105 managing agent or some other person selected by the declarant, to (a) appoint and remove some or all
106 of the officers of the unit owners' association or its executive board and (b) exercise powers and
107 responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition,
108 such statement shall contain both a notice of the effect of the extension of declarant control on the
109 enforcement of the warranty against structural defects provided by the declarant in accordance with §
110 55.1-1955 and a statement that a unit owner is advised to exercise whatever due diligence the unit
111 owner deems necessary to protect his interest.

112 C. If entered into any time prior to the expiration of the period of declarant control, no contract or
113 lease entered into with the declarant or any entity controlled by the declarant, management contract,
114 employment contract, or lease of recreational or parking areas or facilities, which is directly or indirectly
115 made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group,
116 shall be entered into for a period in excess of two years. Any such contract or agreement entered into
117 on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its
118 executive board upon not less than 90 days' written notice to the other party given not later than 60
119 days after the expiration of the period of declarant control. Any such contract or agreement may be
120 renewed for periods not in excess of two years; however, at the end of any two-year period the unit

owners' association or its executive board may terminate any further renewals or extensions of such contract or agreement. *If the unit owners' association is managed by a common interest community manager subject to a contract that renews automatically, such manager shall provide the association with notice of such renewal at least 30 days but not more than 90 days prior to the date that such contract will automatically renew. Such notice shall be made prior to every renewal period.* The provisions of this subsection shall not apply to any lease referred to in § 55.1-1910 or subject to subsection E of § 55.1-1916.

D. If entered into at any time prior to the expiration of the period of declarant control, any contract, lease, or agreement, other than those subject to the provisions of subsection C, may be entered into by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, if such contract, lease, or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

E. This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments requiring that the unit owners be parties to such contracts.

F. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive board, or any officer.

G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the locality in which the condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes or local ordinances or other deficiencies of record.

H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant, including minute books and all rules, regulations, and amendments to such rules and regulations that may have been promulgated; (ii) an accurate and complete statement of receipts and expenditures prepared using the accrual method of accounting from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first annual meeting of the unit owners, not to exceed 60 days from the date of the election; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans, if available; (iv) all association insurance policies that are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) contracts in which the association is a contracting party, if any; (vii) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property; and (viii) an inventory and description of stormwater facilities located on the common elements or which otherwise serve the condominium and for which the unit owners' association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.

The requirement for delivery of stormwater facility information required by clause (viii) shall be deemed satisfied by delivery to the association of a final site plan or final construction drawing showing stormwater facilities as approved by a local government jurisdiction and applicable recorded easements, or agreements if any, containing requirements for the maintenance, repair, or replacement of the stormwater facilities.

If the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

I. This section shall be strictly construed to protect the rights of the unit owners.

§ 55.1-2136. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the proprietary lessees pursuant to subsection F of § 55.1-2134 takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the proprietary lessees at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the proprietary lessees pursuant to subsection F of § 55.1-2134 takes office after giving at least 90 days'

notice to the other party. However, a management contract that is not unconscionable between an association directly or indirectly providing assisted living or nursing services to proprietary lessees and a declarant or an affiliate of a declarant may not be terminated while a member of the executive board appointed by the declarant continues to serve unless such termination is approved by a vote of a majority of the members of the executive board and a majority vote of the proprietary lessees, other than the declarant. *If the association is managed by a common interest community manager subject to a contract that renews automatically, such manager shall provide the association with notice of such renewal at least 30 days but not more than 90 days prior to the date that such contract will automatically renew. Such notice shall be made prior to every renewal period.*

This section does not apply to any proprietary lease or any lease the termination of which would terminate the cooperative or reduce its size, unless the real estate subject to that lease was included in the cooperative for the purpose of avoiding the right of the association to terminate a lease under this section. This section does not apply to any contract, incidental to the disposition of a cooperative interest, to provide to a proprietary lessee for the duration of such proprietary lessee's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging, and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the declaration, bylaws, or proprietary leases requiring that the proprietary lessees be parties to such contracts.

§ 55.1-2209. Time-share instrument for time-share estate project.

In addition to the requirements of § 55.1-2208, the time-share instrument for a time-share estate project shall outline or prescribe reasonable arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units it comprises, which shall include provisions for the following:

1. Creation of an association, the members of which shall be the time-share estate owners. The association may be formed pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.); however, the association shall be formed prior to the time the project and program are registered with the Board. Nothing shall affect the validity of the association, once formed, and the rights applicable to it as granted by this chapter, notwithstanding the time when such association was formed;

2. Payment of costs and expenses of operating the time-share estate program and owning and maintaining the units it comprises;

3. Employment and termination of employment of the managing agent for the project. Any agreement pertaining to the employment of the managing agent and executed during the developer control period shall be voidable by the association at any time after termination of the developer control period for the time-share project, and any provision in such agreement to the contrary is hereby declared to be void. *However, if the management agreement is subject to a provision that allows such agreement to renew automatically, the managing agent shall provide the association with notice of such renewal at least 30 days but not more than 90 days prior to the date that such agreement will automatically renew. Such notice shall be made prior to every renewal period;*

4. Termination of leases and contracts for goods and services for the time-share estate project that are entered into during the developer control period. Any such lease or contract shall become voidable at the option of the association upon termination of the developer control period for the entire time-share project, or sooner if the provisions of such lease or contract so state;

5. Preparation and dissemination to time-share estate owners of the annual report required by § 55.1-2213;

6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners;

7. Collection of regular assessments, fees or dues, or special assessments from time-share estate owners to defray all time-share expenses;

8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of the project by time-share estate owners, their guests, and other users. The costs associated with securing and maintaining such insurance shall be a time-share expense. Nothing in this subdivision shall be construed to obligate the managing entity to secure insurance on the conduct of the time-share estate owners, their guests, and other users or the personal effects or property of such owners, guests, and users;

9. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or time-share project for failure of such owner to comply with provisions of the time-share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures, a time-share

244 estate owner shall be given reasonable notice and reasonable opportunity to be heard and explain the
245 charges against him in person or in writing to the board of directors of the association before a decision
246 to impose discipline is rendered; and
247 11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the
248 management of the time-share estate program and the units it comprises.

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