

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 54

An Act to amend and reenact §§ 55.1-2308 through 55.1-2312, 55.1-2316, and 55.1-2317 of the Code of Virginia, relating to Resale Disclosure Act; delivery of resale certificate; remedies.

[H 876]

Approved March 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-2308 through 55.1-2312, 55.1-2316, and 55.1-2317 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-2308. Contract for resale; disclosures.

Unless exempt pursuant to § 55.1-2317, any contract for the resale of a unit in a common interest community shall disclose (i) that the unit is located in a common interest community; (ii) that the seller *or the seller's agent* is required to obtain from the association a resale certificate and provide it to the purchaser *or the purchaser's agent*; (iii) the purchaser's right to cancel the contract pursuant to § 55.1-2312; (iv) that the purchaser *or the purchaser's agent* may request an updated resale certificate pursuant to § 55.1-2311; and (v) that the purchaser's right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement. If the contract does not contain the disclosures required by this section, the purchaser's sole remedy is to cancel the contract prior to settlement.

§ 55.1-2309. Resale certificate; delivery.

A. The seller *or the seller's agent* shall ~~be required to~~ obtain the resale certificate from the association and provide such resale certificate to the purchaser *or the purchaser's agent*. *This requirement shall not be waived or changed by agreement.*

B. Unless exempt pursuant to § 55.1-2317, the association, the association's managing agent, or any third party preparing the resale certificate on behalf of the association shall deliver such resale certificate within 14 days after a written request by a seller or seller's agent. *If no resale certificate is delivered within 14 days after such request, the resale certificate shall be deemed unavailable.*

C. The association, association's managing agent, or any third party preparing the resale certificate on behalf of the association shall deliver the resale certificate to the seller, or to such person as the seller may direct, either printed or in a generally accepted electronic format as the seller may request.

D. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. The seller or purchaser may request an updated resale certificate as provided in § 55.1-2311.

§ 55.1-2310. Resale certificate; form and contents.

A. The association shall include the completed resale certificate form, developed by the common interest community board pursuant to subdivision 3 of § 54.1-2350, with supporting documentation set out in the following order:

1. The name, address, and phone numbers of the preparer of the resale certificate and any managing agent of the association;
2. A copy of the governing documents and any rules and regulations of the association;
3. A statement disclosing any restraint on the alienability of the unit for which the resale certificate is being issued;
4. A statement of the amount and payment schedules of assessments and any unpaid assessments currently due and payable to the association;
5. A statement of any other fees due and payable by an owner of the unit;
6. A statement of any other entity or facility to which the owner of the unit being sold may be liable for assessments, fees, or other charges due to the ownership of the unit;
7. A statement of the amount and payment schedule of any approved additional or special assessment and any unpaid additional or special assessment currently due and payable;
8. A statement of any capital expenditures approved by the association for the current and succeeding fiscal years;
9. A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;
10. The most recent balance sheet and income and expense statement, if any, of the association;
11. The current operating budget of the association;
12. The current reserve study, or a summary of such study;
13. A statement of any unsatisfied judgments against the association and the nature and status of any pending actions in which the association is a party and that could have a material impact on the association, the owners, or the unit being sold;

14. A statement describing any insurance coverage provided by the association for the benefit of the owners, including fidelity coverage, and any insurance coverage recommended or required to be obtained by the owners;

15. A statement as to whether the board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the unit being sold or to the limited elements assigned thereto violate any provision of the governing documents or rules and regulations together with copies of any notices provided;

16. A statement as to whether the board has received written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the unit being sold, the limited elements assigned thereto, or any other portion of the common interest community that has not been cured;

17. A copy of any approved minutes of meetings of the board held during the last six months;

18. A copy of any approved or draft minutes of the most recent association meeting;

19. A statement of the remaining term of any leasehold estate affecting a common area or common element, as those terms are defined in §§ 55.1-1800, 55.1-1900, and 55.1-2100, in the common interest community and the provisions governing any extension or renewal of such leasehold;

20. A statement of any limitation in the governing documents on the number or age of persons who may occupy a unit as a dwelling;

21. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to display the flag of the United States, including reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

22. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on the owner's unit or limited element;

23. A statement setting forth any restriction, limitation, or prohibition on the size, placement, or duration of display of political, for sale, or any other signs on the property;

24. A statement identifying any parking or vehicle restriction, limitation, or prohibition in the governing documents or rules and regulations;

25. A statement setting forth any restriction, limitation, or prohibition on the operation of a home-based business that otherwise complies with all applicable local ordinances;

26. A statement setting forth any restriction, limitation, or prohibition on an owner's ability to rent the unit;

27. In a cooperative, ~~an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the owner of real estate taxes and interest paid by the association a statement setting forth whether the cooperative association is aware of any statute, regulation, or rule applicable to the cooperative that would affect an owner's ability to deduct real estate taxes and interest paid by the cooperative association for federal income tax purposes;~~

28. A statement describing any pending sale or encumbrance of common elements;

29. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies; and

30. Certification that the association has filed with the Common Interest Community Board the annual report required by law, which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing.

§ 55.1-2311. Updated resale certificate; financial update.

A. If a resale certificate was issued more than 30 days but less than 12 months before settlement, the seller or the purchaser, upon proof of being the contract purchaser of the unit, may request an updated resale certificate. The updated resale certificate shall be delivered to the person requesting it, or as such person may direct, in the format requested. The updated resale certificate shall be delivered within 10 days after the written request.

B. The updated resale certificate shall contain current information for all items that may have changed from the original resale certificate or a statement that there are no changes.

C. A settlement agent *or other third party* authorized by the seller or purchaser may request a financial update and the association shall provide such information within three business days after the written request.

§ 55.1-2312. Cancellation of contract by purchaser.

A. The purchaser may cancel the contract:

1. ~~Within three days, or up to seven days if extended by the ratified real estate contract, after the ratification date of the contract if the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable on or before the date that the contract is ratified;~~

2. ~~Within three days, or up to seven days if extended by the ratified real estate contract, from the date the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable if delivery occurs after the contract is ratified; or~~

3. ~~At any time prior to settlement if the resale certificate is not delivered to the purchaser. If delivery of the resale certificate to the purchaser or purchaser's agent, whether or not complete pursuant to~~

§ 55.1-2310, or a notice that the resale certificate is unavailable, occurs before the contract is ratified, the purchaser may cancel the contract within a time period agreed upon by all parties in the ratified real estate contract. If no time period is specified in the ratified real estate contract, the purchaser shall have three days from the date of ratification to cancel the contract.

B. If delivery of the resale certificate to the purchaser or purchaser's agent, whether or not complete pursuant to § 55.1-2310, or a notice that such resale certificate is unavailable, occurs after the contract is ratified, the purchaser may cancel the contract within a time period agreed upon by all parties to the real estate contract. If no time period is specified in the ratified real estate contract, the purchaser shall have three days from receipt of the resale certificate or notice that the resale certificate is unavailable to cancel the contract.

C. If the resale certificate or notice that the resale certificate is unavailable has not been delivered to the purchaser, the purchaser or purchaser's agent may cancel the contract at any time prior to settlement.

~~B.~~ D. Written notice of cancellation shall be provided to the seller in accordance with the terms of the contract. The purchaser shall have the burden to demonstrate delivery of the notice of cancellation.

~~C.~~ E. If the unit is governed by more than one association, the timeframe for the purchaser's right of cancellation shall run from the date of delivery of the last resale certificate.

~~D.~~ F. Cancellation shall be without penalty, and the seller shall cause any deposit or escrowed funds to be returned promptly to the purchaser.

§ 55.1-2316. Resale certificate; fees.

A. An association may charge a post-closing fee and fees for preparation, delivery, and expedited delivery of a resale certificate, an updated resale certificate, or financial update and for the inspection of a unit performed to prepare the resale certificate or updated resale certificate. ~~Unless provided otherwise by the association, the appropriate fees shall be paid when the resale certificate, updated resale certificate, or financial update is requested.~~ The seller shall be responsible for all fees associated with the preparation and delivery of the resale certificate, including any fees for inspection of the unit. The requesting party shall pay any fees for the preparation and delivery of the updated resale certificate ~~or financial update.~~ ~~The seller shall be responsible for all fees associated with the preparation and delivery of the financial update.~~ However, a settlement agent or other requesting party may pay such fees up front, regardless of whether such settlement agent or other requesting party requests to be reimbursed for such fees from the seller.

B. ~~Unless provided otherwise by the association or this section, fees charged by an association for the preparation and delivery of a resale certificate, an updated resale certificate, or a financial update shall be paid when the resale certificate, updated resale certificate, or financial update is requested.~~ However, if the seller agrees to pay the fees for preparation and delivery of the financial update, the association or the association's management agent shall either (i) upon receipt of the request for the financial update, send instructions by electronic means to the seller for electronic payment or (ii) accept payment of such fees at the time of closing.

C. The Common Interest Community Board shall establish the maximum fees that the association may charge for such post-closing and preparation, delivery, and inspection; such maximum fees shall be commercially reasonable and consistent with the effort required to comply with the resale certificate requirements. The maximum allowable fees, as published by the Common Interest Community Board and effective as of January 12, 2023, shall be adjusted no less than every five years, as of January 1 of that year, in an amount not less than the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor or an equivalent successor index.

~~C.~~ D. The association shall publish and make available a schedule of the applicable fees (i) for preparation and delivery of the resale certificate, updated resale certificate, and financial update; (ii) for the inspection of a unit; and (iii) related to any post-closing costs.

~~D.~~ E. A post-closing fee to be collected at settlement may be imposed on the purchaser of the property for the purpose of establishing the purchaser as the owner of the property in the records of the association.

~~E.~~ F. 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, 55.1-1980, or 55.1-2182; (iii) is current in paying any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5; and (iv) provides the option to receive the disclosure packet electronically.

§ 55.1-2317. Exemptions.

A. The resale certificate required by this chapter need not be provided in the case of:

1. An initial disposition ~~by a declarant~~ of a unit to a person or entity that is not acquiring the unit for his own residence or for the construction of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. The person or entity acquiring the unit shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters;

2. A disposition of a unit by gift;
 3. A disposition of a unit pursuant to court order if the court so directs;
 4. A disposition of a unit by foreclosure or deed in lieu of foreclosure;
 5. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction; or
 6. A disposition of a unit in a common interest community containing no residential units.
- B. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the association and provide the resale certificate to the purchaser.