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HOUSE BILL NO. 578

Offered January 19, 1996

A BILL to amend and reenact § 55-509 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-509.2, relating to the Property Owners' Association Act.

Patrons—Wagner (By Request) and Tata

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-509 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-509.2 as follows:

§ 55-509. Definitions.

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

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"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 in an amount in excess of \$150 per year per lot 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 in an amount in excess of \$150 per year per lot as a regular annual assessment in connection with the provision of maintenance and/or services 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. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"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 if the condominium or cooperative is a part of a development.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration. A property owners' association shall not include the association formed pursuant to the Condominium Act (§ 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or the Virginia Membership Camping Act (§ 59.1-311 et seq.).

§ 55-509.2. 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 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 without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures prepared in accordance with generally accepted accounting practices from the date of the recording of a deed to an owner other than the declarant to the end of the regular accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed sixty days after the date of the election; (iii) a copy of all plans and specifications prepared prior to, during, or after construction of the improvements to the common areas, including as-built plans and landscaping plans,

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60 if any; however, the declarant shall not be held liable by reason of the fact that the as-built
61 improvements do not conform to the original plans and specifications unless such nonconformity results
62 in a violation of any state statute, building code, or local ordinance, or deviates from the construction
63 standards set forth in the builder warranty program most prevalent in the area where the community is
64 located; (iv) all association insurance policies which are currently in force; (v) written unexpired
65 warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all
66 common area improvements; (vi) any contracts in which the association is a contracting party, if any;
67 and (vii) a list of manufacturers of paints, roofing materials and other similar materials used on the
68 association property.
69 If the association is managed by a management company in which the declarant, or its principals,
70 have no pecuniary interest or management role, then such management company shall have the
71 responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).