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HOUSE BILL NO. 954

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 55.1-1816 and 55.1-1832 of the Code of Virginia, relating to the Property Owners' Association Act; use of electronic means for meetings and voting.

Patron—Convirs-Fowler

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1816 and 55.1-1832 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1816. Meetings of the board of directors.

A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

Any member may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

If a member is incapable or otherwise unable to be physically present at a meeting, reasonable accommodations shall be made to allow any such member to participate by telephone or video conference. A member who participates in a meeting by telephone or video conference shall be deemed present for quorum and voting purposes.

Except for the election of officers, voting by secret or written ballot in an open meeting shall be a violation of this chapter.

C. The board of directors or any subcommittee or other committee of the board of directors may (i) convene in executive session to consider personnel matters; (ii) consult with legal counsel; (iii) discuss and consider contracts, pending or probable litigation, and matters involving violations of the declaration or rules and regulations adopted pursuant to such declaration for which a member or his family members, tenants, guests, or other invitees are responsible; or (iv) discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee of the board of directors, following the executive session, reconvenes

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59 in open meeting and takes a vote on such contract, motion, or other action, which shall have its
60 substance reasonably identified in the open meeting. The requirements of this section shall not require
61 the disclosure of information in violation of law.

62 D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide
63 a designated period during each meeting to allow members an opportunity to comment on any matter
64 relating to the association. During a meeting at which the agenda is limited to specific topics or at a
65 special meeting, the board of directors may limit the comments of members to the topics listed on the
66 meeting agenda.

67 **§ 55.1-1832. Use of technology.**

68 A. Unless expressly prohibited by the declaration, (i) any notice required to be sent or received or
69 (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw
70 provision or any provision of this chapter may be accomplished using electronic means.

71 B. The association, the lot owners, and those entitled to occupy a lot may perform any obligation or
72 exercise any right under any declaration or bylaw provision or any provision of this chapter by use of
73 electronic means.

74 C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement
75 for a signature under any declaration or bylaw provision or any provision of this chapter.

76 D. Voting on, consent to, and approval of any matter under any declaration or bylaw provision or
77 any provision of this chapter may be accomplished by electronic means, provided that a record is
78 created as evidence of such vote, consent, or approval and maintained as long as such record would be
79 required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be
80 obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic
81 means cannot protect the identity of the voter, another means of voting shall be used.

82 E. Subject to other provisions of law, no action required or permitted by any declaration or bylaw
83 provision or any provision of this chapter need be acknowledged before a notary public if the identity
84 and signature of such person can otherwise be authenticated to the satisfaction of the board of directors.

85 F. Any meeting of the association, the board of directors, or any committee may be held entirely or
86 partially by electronic means, provided that the board of directors has adopted *relevant* guidelines ~~for the~~
87 ~~use of electronic means for such meetings that apply equally to all board members and lot owners.~~ Such
88 guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons
89 entitled to participate in such meetings have an opportunity to do so. The board of directors shall
90 determine whether any such meeting may be held entirely or partially by electronic means.

91 G. If any person does not have the capability or desire to conduct business using electronic means,
92 the association shall make available a reasonable alternative, at its expense, for such person to conduct
93 business with the association without use of such electronic means.

94 H. This section shall not apply to any notice related to an enforcement action by the association, an
95 assessment lien, or foreclosure proceedings in enforcement of an assessment lien.