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HOUSE BILL NO. 955

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 55.1-1815 of the Code of Virginia, relating to Property Owners' Association Act; access to association records; electronic participation in association meetings.

Patron—Convirs-Fowler

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:**1. That § 55.1-1815 of the Code of Virginia is amended and reenacted as follows:****§ 55.1-1815. Access to association records; association meetings; notice.**

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be *made available for examination and copying by* to a member in good standing or his authorized agent *in a manner consistent with the association's routine practices and procedures for the keeping and production of such books and records*, including physical and electronic methods of production. *Books and records to be made available pursuant to subsection C include:*

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of ~~examination~~ *to examine, copy, or otherwise obtain books and records of the association* shall exist *and be applied equally and objectively to all lot owners* without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55.1-1819;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55.1-1816;

8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records

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HB955

59 containing information subject to an exclusion under subsection C may be withheld or redacted, and all
60 portions of the books and records that are not so excluded shall be available for examination ~~and~~,
61 copying, *or production*, provided that the requesting member shall be responsible to the association for
62 paying or reimbursing the association for any reasonable costs incurred by the association in responding
63 to the request for the books and records and review for redaction of the same.

64 E. Prior to providing copies of any books and records to a member in good standing under this
65 section, the association may impose and collect a charge, reflecting the reasonable costs of materials and
66 labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in
67 accordance with a cost schedule adopted by the board of directors in accordance with this subsection.
68 The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally *and objectively*
69 to all members in good standing, and (iii) be provided to such requesting member at the time the
70 request is made.

71 F. Notwithstanding the provisions of subsections B and C, all books and records of the association,
72 including individual salary information for all employees and payments to independent contractors, shall
73 be available for examination ~~and~~, copying, *or production* upon request by a member of the board of
74 directors in the discharge of his duties as a director.

75 G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least
76 once each year after the formation of the association. The bylaws shall specify an officer or his agent
77 who shall, at least 14 days in advance of any annual or regularly scheduled meeting and at least seven
78 days in advance of any other meeting, send to each member notice of the time, place, and purposes of
79 such meeting. In the event of cancellation of any annual meeting of the association at which directors
80 are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall
81 include a statement that the meeting is scheduled for the purpose of the election of directors.

82 Notice shall be sent by United States mail to all members at the address of their respective lots
83 unless the member has provided to such officer or his agent an address other than the address of the
84 member's lot. In lieu of sending such notice by United States mail, notice may instead be (i) hand
85 delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice
86 was delivered to the member, or (ii) sent to the member by electronic mail, provided that the member
87 has elected to receive such notice by electronic mail and, in the event that such electronic mail is
88 returned as undeliverable, notice is subsequently sent by United States mail. Except as provided in
89 subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (a)
90 within 60 days from the conclusion of the meeting to which such minutes appertain or (b) when such
91 minutes are distributed to board members as part of an agenda package for the next meeting of the
92 board of directors, whichever occurs first.

93 H. Unless expressly prohibited by the governing documents, ~~a member may vote at a meeting of the~~
94 ~~association in person, by proxy, or by absentee ballot. Such voting members may participate in any~~
95 ~~meeting of the association through electronic communication means to the extent that such participation~~
96 ~~is authorized by the board of directors. Voting may take place by electronic means, provided that the~~
97 ~~board of directors has adopted guidelines for such voting by electronic means. Members voting by~~
98 ~~absentee ballot or proxy shall be deemed to be present at the meeting for all purposes participating in a~~
99 ~~meeting through electronic communication means shall be deemed present for quorum purposes and may~~
100 ~~vote at such meeting if the board of directors has implemented reasonable measures to (i) verify that~~
101 ~~each person participating electronically is a member or such member's proxy and (ii) provide members~~
102 ~~a reasonable opportunity to participate in the meeting, including a substantially equivalent means to~~
103 ~~observe or listen to the proceedings of the meeting concurrently with such proceedings, and to vote on~~
104 ~~such matters that are heard, discussed, or presented at the meeting.~~