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SENATE BILL NO. 197

Offered January 12, 2022

Prefiled January 10, 2022

A *BILL to amend and reenact §§ 54.1-2350, 55.1-1806, 55.1-1809, 55.1-1823, 55.1-1962, 55.1-1973, and 55.1-1991 of the Code of Virginia, relating to common interest communities; prohibition on refusal to recognize a licensed real estate broker.*

Patron—Mason

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2350, 55.1-1806, 55.1-1809, 55.1-1823, 55.1-1962, 55.1-1973, and 55.1-1991 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2350. Annual report; form to accompany resale certificates and disclosure packets.

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of Article 2 (§ 54.1-2354.1 et seq.);
2. Develop and disseminate an association annual report form for use in accordance with §§ 55.1-1836, 55.1-1835, 55.1-1980, and 55.1-2182; and
3. Develop and disseminate a form to accompany resale certificates required pursuant to § 55.1-1990 and association disclosure packets required pursuant to § 55.1-1809, which form shall summarize the unique characteristics of common interest communities generally that may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest community. The form shall include information on the following, which may or may not be applicable to a particular common interest community: (i) the obligation on the part of an owner to pay regular annual or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments; (iii) the purposes for which such assessments, if any, may be used, including for the construction or maintenance of stormwater management facilities; (iv) the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living; (v) limitations on an owner's ability to rent his lot or unit; (vi) limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community; (vii) limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) the period or length of declarant control; and (xi) that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law. The form shall also provide that (a) the purchaser remains responsible for his own examination of the materials that constitute the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b) the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies between the form and the resale certificate or disclosure packet.

§ 55.1-1806. Rental of lots.

A. Except as expressly authorized in this chapter, in the declaration, or as otherwise provided by law, no association shall:

1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or impose a charge except as provided in § 55.1-1805;
2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during the term of any lease;
3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1805;
4. Require the lot owner to use a lease or an addendum to the lease prepared by the association;
5. Charge any deposit from the lot owner or the tenant of the lot owner; ~~or~~
6. Have the authority to evict a tenant of any lot owner or to require any lot owner to execute a power of attorney authorizing the association to evict such a tenant. ~~However, if the lot owner designates;~~
7. ~~Refuse to recognize a person licensed under the provisions of § 54.1-2106.1 designated by the lot owner as the lot owner's authorized representative with respect to any lease; the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative under the provisions of~~

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SB197

59 § 55.1-1823. Notwithstanding the foregoing, the requirements of § 55.1-1828 and the declaration shall be
60 satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

61 B. The association may require the lot owner to provide the association with (i) the names and
62 contact information of and vehicle information for the tenants and authorized occupants under such lease
63 and (ii) the name and contact information of any authorized agent of the lot owner. The association may
64 require the lot owner to provide the association with the tenant's acknowledgment of and consent to any
65 rules and regulations of the association.

66 C. The provisions of this section shall not apply to lots owned by the association.

67 **§ 55.1-1809. Contents of association disclosure packet; delivery of packet.**

68 A. Within 14 days after receipt of a written request and instructions by a seller or the seller's
69 authorized agent, the association, *the association's managing agent, or any third party preparing an*
70 *association disclosure packet on behalf of the association* shall deliver an association disclosure packet
71 as directed in the written request. The information contained in the association disclosure packet shall be
72 current as of a date specified on the association disclosure packet. If hand or electronically delivered, the
73 written request is deemed received on the date of delivery. If sent by United States mail, the request is
74 deemed received six days after the postmark date. An association disclosure packet shall contain the
75 following:

76 1. The name of the association and, if incorporated, the state in which the association is incorporated
77 and the name and address of its registered agent in the Commonwealth;

78 2. A statement of any expenditure of funds approved by the association or the board of directors that
79 requires an assessment in addition to the regular assessment during the current year or the immediately
80 succeeding fiscal year;

81 3. A statement, including the amount of all assessments and any other mandatory fees or charges
82 currently imposed by the association, together with any post-closing fee charged by the common interest
83 community manager, if any, and associated with the purchase, disposition, and maintenance of the lot
84 and to the right of use of common areas, and the status of the account;

85 4. A statement of whether there is any other entity or facility to which the lot owner may be liable
86 for fees or other charges;

87 5. The current reserve study report or summary of such report, a statement of the status and amount
88 of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a
89 specified project;

90 6. A copy of the association's current budget or a summary of such budget, prepared by the
91 association, and a copy of its statement of income and expenses or statement of its financial position
92 (balance sheet) for the last fiscal year for which such statement is available, including a statement of the
93 balance due of any outstanding loans of the association;

94 7. A statement of the nature and status of any pending action or unpaid judgment (i) to which the
95 association is a party and (ii) that could or would have a material impact on the association or its
96 members or that relates to the lot being purchased;

97 8. A statement setting forth the insurance coverage that is provided for all lot owners by the
98 association, including the fidelity coverage maintained by the association, and any additional insurance
99 that is required or recommended for each lot owner;

100 9. A statement that any improvement or alteration made to the lot, or uses made of the lot or
101 common area assigned to such lot, is or is not in violation of the declaration, bylaws, rules and
102 regulations, architectural guidelines, and articles of incorporation, if any, of the association;

103 10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
104 place a sign on the owner's lot advertising the lot for sale;

105 11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
106 display any flag on the owner's lot, including reasonable restrictions as to the size, place, and manner of
107 placement or display of such flag and the installation of any flagpole or similar structure necessary to
108 display such flag;

109 12. A statement setting forth any restrictions as to the size, place, duration, or manner of placement
110 or display of political signs by a lot owner on his lot;

111 13. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
112 install or use solar energy collection devices on the owner's property;

113 14. A copy of the current declaration, the association's articles of incorporation and bylaws, and any
114 rules and regulations or architectural guidelines adopted by the association;

115 15. A copy of any approved minutes of the board of directors and association meetings for the six
116 calendar months preceding the request for the disclosure packet;

117 16. A copy of the notice given to the lot owner by the association of any current or pending rule or
118 architectural violation;

119 17. A copy of the fully completed form developed by the Common Interest Community Board
120 pursuant to § 54.1-2350;

18. Certification that the association has filed with the Common Interest Community Board the annual report required by § 55.1-1835. Such certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing; and

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

B. Failure to receive copies of an association disclosure packet shall not excuse any failure to comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

C. The disclosure packet shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the disclosure packet shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. The disclosure packet required by this section shall not, in and of itself, be deemed a security as defined in § 13.1-501.

D. The seller or the seller's authorized agent may request that the disclosure packet be provided in hard copy or in electronic form. An association or common interest community manager may provide the disclosure packet electronically; however, the seller or the seller's authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the disclosure packet in person at the principal place of business of the association. If the seller or the seller's authorized agent requests that the disclosure packet be provided in electronic format, neither the association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The disclosure packet shall not be delivered in hard copy if the requester has requested delivery of such disclosure packet electronically. If the disclosure packet is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55.1-1810. If the seller or the seller's authorized agent asks that the disclosure packet be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the property owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55.1-1810. Regardless of whether the disclosure packet is delivered in paper form or electronically, the preparer of the disclosure packet shall provide such disclosure packet directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

§ 55.1-1823. Designation of authorized representative.

Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization ~~signed by the lot owner designating such representative~~ *that includes the designated representative's name, contact information, and license number and the lot owner's signature*. Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

§ 55.1-1962. Designation of authorized representative.

Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization ~~signed by the unit owner designating such representative~~ *that includes the designated representative's name, contact information, and license number and the unit owner's signature*. Notwithstanding the foregoing, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

§ 55.1-1973. Rental of units.

A. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55.1-1904;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during

the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1904;

4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit owners' association;

5. Charge any deposit from the unit owner or the tenant of the unit owner; or

6. Have the authority to evict a tenant of any unit owner or to require any unit owner to execute a power of attorney authorizing the unit owners' association to so evict. ~~However, if the unit owner designates; or~~

7. ~~Refuse to recognize a person licensed under the provisions of § 54.1-2106.1 designated by the unit owner as the unit owner's authorized representative with respect to any lease; the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative under the provisions of § 55.1-1962.~~ Notwithstanding any other provision of this subdivision, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

B. The unit owners' association may require the unit owner to provide the unit owners' association with the names and contact information of the tenants and authorized occupants under such lease and of any authorized agent of the unit owner and vehicle information for such tenants or authorized occupants. The unit owners' association may require the unit owner to provide the unit owners' association with the tenant's acknowledgment of and consent to any rules and regulations of the unit owners' association.

C. The provisions of this section shall not apply to units owned by the unit owners' association.

§ 55.1-1991. Contents of resale certificate; delivery.

A. A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55.1-1966, which need not be notarized, and, if applicable, an appropriate statement pursuant to § 55.1-1969;

2. A statement of any expenditure of funds approved by the unit owners' association or the executive board that requires an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the condominium unit and the use of the common elements, and the status of the account;

4. A statement of whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;

5. The current reserve study report or a summary of such report and a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive board;

6. A copy of the unit owners' association's current budget or a summary of such budget prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;

7. A statement of the nature and status of any pending actions or unpaid judgments to which the unit owners' association is a party that either could or would have a material impact on the unit owners' association or the unit owners or that relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including the fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, are or are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations, and architectural guidelines adopted by the unit owners' association and the amendments to any such documents;

11. A statement of whether any portion of the condominium is located within a development subject to the Property Owners' Association Act (§ 55.1-1800 et seq.);

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. A copy of any approved minutes of the executive board and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § 55.1-1980, the filing number assigned by the Common Interest Community Board, and the expiration date of such filing;

15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

16. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit 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;

17. A statement setting forth any restriction, limitation, or prohibition on the right of a unit owner to install or use solar energy collection devices on the unit owner's property;

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

19. A copy of the fully completed form developed by the Common Interest Community Board pursuant to § 54.1-2350.

B. Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

C. The resale certificate shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. ~~The resale certificate shall be delivered within 14 days of receipt of such request~~ *Within 14 days after receipt of a written request and instructions by a seller or the seller's authorized agent, the association, the association's managing agent, or any third party preparing a resale certificate on behalf of a unit owners' association shall deliver the resale certificate as directed in the written request.* The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or the seller's authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or the seller's authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or the seller's authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The resale certificate shall not be delivered in hard copy if the requester has requested delivery of such resale certificate electronically. If the resale certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55.1-1992. If the seller or the seller's authorized agent asks that the resale certificate be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the unit owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55.1-1992. Regardless of whether the resale certificate is delivered in paper form or electronically, the preparer of the resale certificate shall provide such resale certificate directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

E. Subject to the provisions of § 55.1-1972, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55.1-2000 et seq.).

F. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the resale certificate may be made by the unit owner or the seller's authorized agent.

G. If the unit is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last resale certificate or disclosure packet.