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SENATE BILL NO. 217

Offered January 12, 2022

Prefiled January 10, 2022

A BILL to amend and reenact § 55.1-1815 of the Code of Virginia, relating to access to records under the Property Owners' Association Act; generally accepted accounting principles.

Patron—McPike (By Request)

Referred to Committee on General Laws and Technology

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~~ *principles*.

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 available for examination and copying by a member in good standing or his authorized agent, including:

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 shall exist 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 containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or

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59 reimbursing the association for any reasonable costs incurred by the association in responding to the
60 request for the books and records and review for redaction of the same.

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

67 F. Notwithstanding the provisions of subsections B and C, all books and records of the association,
68 including individual salary information for all employees and payments to independent contractors, shall
69 be available for examination and copying upon request by a member of the board of directors in the
70 discharge of his duties as a director.

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

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

89 H. Unless expressly prohibited by the governing documents, a member may vote at a meeting of the
90 association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means,
91 provided that the board of directors has adopted guidelines for such voting by electronic means.
92 Members voting by absentee ballot or proxy shall be deemed to be present at the meeting for all
93 purposes.