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VIRGINIA CONDOMINIUM ACT

ARTICLE 1 General Provisions

Section 55-79.39. How chapter cited. This chapter shall be known and may be cited as the “Condominium Act.”

Section 55-79.40. Application and construction of chapter.

A. This chapter shall apply to all condominiums and to all horizontal property regimes or condominium projects. For the purposes of this chapter, the terms “horizontal property regime” and “condominium project” shall be deemed to correspond to the term “condominium” ; the term “apartment” shall be deemed to correspond to the term “unit” ; the term “co-owner” shall be deemed to correspond to the term “unit owner” ; the term “council of co-owners” shall be deemed to correspond to the term “unit owners’ association” ; the term “developer” shall be deemed to correspond to the term “declarant” ; the term “general common elements” shall be deemed to correspond to the term “common elements” ; and the terms “master deed” and “master lease” shall be deemed to correspond to the term “declaration” and shall be deemed included in the term “condominium instruments.” This chapter shall be deemed to supersede the Horizontal Property Act, §§ 55-79.1 through 55-79.38, and no condominium shall be established under the latter on or after July 1, 1974. But this chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to July 1, 1974. Nor shall Article 4 (§ 55-79.86 et seq.) of this chapter be deemed to supersede §§ 55-79.16 through 55-79.31 of the Horizontal Property Act as to any condominiums established prior to the effective date hereof.

B. This chapter shall not apply to condominiums located outside the Commonwealth. Sections 55-79.88 through 55-79.94 and §§ 55-79.98 through 55-79.103 shall apply to all contracts for the disposition of condominium units signed in the Commonwealth by any person, unless exempt under § 55-79.87.

C. Subsection B of § 55-79.79 and § 55-79.94 do not apply to the declarant of a conversion condominium if that declarant is a proprietary lessees’ association that, immediately before the creation of the condominium, owned fee simple title to or a fee simple reversionary interest in the real estate described pursuant to subdivision (a) (3) of § 55-79.54.

Section 55-79.41. Definitions. When used in this chapter:

“Capital components” means those items, whether or not a part of the common elements, for which the unit owners’ association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

“Common elements” means all portions of the condominium other than the units.

“Common expenses” means all expenditures lawfully made or incurred by or on behalf of the unit owners’ association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments; “future common expenses” means common expenses for which assessments are not yet due and payable.

“Common interest community manager” means the same as that term is defined in § 54.1-2345.

“Condominium” means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

“Condominium instruments” is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

“Condominium unit” means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of “unit,” *infra*.)

“Contractable condominium” means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

“Conversion condominium” means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

“Convertible land” means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

“Convertible space” means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of “unit,” *infra*.)

“Declarant” means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to Section 55-79.74:3; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term “declarant” shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in Section 55-79.74:3. The term “declarant” shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

“Dispose” or “disposition” refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

“Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in Section 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

“Executive organ” means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners’ association.

“Expandable condominium” means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

“Financial update” means an update of the financial information referenced in subdivisions C 2 through C 7 of Section 55-79.97.

“Identifying number” means one or more letters and/or numbers that identify only one unit in the condominium.

“Institutional lender” means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

“Land” is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that

the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

“Leasehold condominium” means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

“Limited common element” means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

“Meeting” or “meetings” means the formal gathering of the executive organ where the business of the unit owners’ association is discussed or transacted.

“Nonbinding reservation agreement” means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

“Offer” means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an “offer” which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

“Officer” means any member of the executive organ or official of the unit owners’ association.

“Par value” means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners’ association, or liability for common expenses assigned on the basis thereof.

“Person” means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

“Purchaser” means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for debt.

“Resale certificate update” means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of Section 55-79.97. The update shall include a copy of the original resale certificate.

“Settlement agent” means the same as that term is defined in Section 6.1-2.20.

“Size” means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may but need not be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

“Special declarant rights” means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners’ association or the executive organ pursuant to Section 55-79.74A, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners’ association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to Section 55-79.66.

“Unit” means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of “condominium unit”, supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with Section 55-79.62(d).

“Unit owner” means one or more persons who own a condominium unit, or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. This term shall not include any person or persons holding an interest in a condominium unit solely as security for a debt.

Section 55-79.41:1. Variation by agreement. Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under power of attorney or use any other device to evade the limitations or prohibitions of this chapter or of the condominium instruments.

Section 55-79.42. Separate assessments, titles and taxation. Except as provided in the following sentence, each condominium unit constitutes for all purposes a separate parcel of real estate. If there is any unit owner other than the declarant, each unit, together with its

common element interest, but excluding its common element interest in convertible land and in any withdrawable land within which the declarant has the right to create units and/or limited common elements shall be separately assessed and taxed. Each convertible land and withdrawable land within which the declarant has the right to create units and/or limited common elements shall be separately assessed and taxed against the declarant.

Section 55-79.43. County and municipal ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations.

A. No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.

B. Subdivision and site plan ordinances in any county, city or town in the Commonwealth shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B of this section, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided such land is subject to an approved site plan.

D. During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.

In accordance with subsection B of Section 55-79.80, once the declarant no longer has such authority, the executive organ of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures,

including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner (including the declarant if the declarant is the unit owner) shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Counties, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof, which do not conform to the zoning, land use and site plan regulations of the respective county or city in which the property is located, shall secure a special use permit, a special exception, or variance, as the case may be, prior to such property becoming a conversion condominium. A request for such a special use permit, special exception, or variance filed on or after July 1, 1982, shall be granted if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. No action on any such request shall be unreasonably delayed. In the event of an approved conversion to condominium ownership, counties, cities, towns, sanitary districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities and other public infrastructure, to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

Section 55-79.44. Eminent domain.

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be paid to the unit owners' association. Provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned in accordance with Section 55-79.57.

(b) If one or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining

units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitations, just compensation to the unit owner of any unit taken for his undivided interest in the common element as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced, in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interest produced thereby, and the award shall include, without limitations, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not vested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for his entire undivided interest in the common elements and for his entire unit.

(e) Votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association had been reduced in proportion to the reduction in their undivided interests in the common elements, and the decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the city or county in which the condominium is located.

ARTICLE 2
Creation, Alteration and Termination of Condominiums

Section 55-79.45. How condominium may be created. No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of Section 55-79.58(a) and (b). The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.

Section 55-79.46. Release of liens.

A. At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to § 55-79.74 has expired, and so long as the bylaws authorize the same. This subsection shall not apply to any lien on more than one condominium unit in a condominium in which all units are restricted to nonresidential use and in which all unit owners whose condominium units will be subject to such lien expressly agree to assume or take subject thereto.

B. In the event that any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to subsection D of § 55-79.83. Subsequent to such payment, discharge or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his condominium unit in accordance with the provisions of § 55-66.4, and the unit owners' association shall not assess, or have a valid lien against, that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 55-79.83 and 55-79.84.

Section 55-79.47. Description of condominium units. After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium, the name of the city or county wherein the condominium is situated, and either the deed book and page number where the first page of the declaration is recorded or else the document number assigned to the declaration by the clerk. Any such description shall be

deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein.

Section 55-79.48. Execution of condominium instruments. The declaration and bylaws, and any amendments to either made pursuant to Section 55-79.71 shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase “owners and lessees” in the preceding sentence and in Section 55-79.63 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale and/or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, or any person whose land is subject to an easement included in the condominium or, in the case of a leasehold condominium subject to any lease or leases executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

Section 55-79.49. Recordation of condominium instruments. All amendments and certifications of condominium instruments shall set forth the name of the city or county in which the condominium is located, and the deed book and page number where the first page of the declaration is recorded. All condominium instruments and all amendments and certifications thereof shall be recorded in every city and county wherein any portion of the condominium is located. The condominium instruments, amendments and certifications shall set forth the name of the condominium and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk. Wherever the phrase “city or county” appears in this chapter, the disjunctive shall be deemed to include the conjunctive and the singular shall be deemed to include the plural.

Section 55-79.50. Construction of condominium instruments.

Except to the extent otherwise provided by the condominium instruments:

(a) The terms defined in Section 55-79.41 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires.

(b) To the extent that walls, floors and/or ceilings are designated as the boundaries of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors and/or ceilings shall be deemed a part of the common elements.

(c) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements.

(d) Subject to the provisions of subsection (c) hereof, all space, interior partitions and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

(e) Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element, appertaining to that unit exclusively; provided that if a single unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover shall be deemed a part of the common elements.

Section 55-79.51. Complementarity of condominium instruments; controlling construction.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction conformable with the statute shall in all cases control over any construction inconsistent therewith.

Section 55-79.52. Validity of condominium instruments; discrimination prohibited.

A. All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (Section 36-96.1 et seq.)

D. Subject to the provisions of subsection C hereof, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units other than such units as may be restricted to residential use only.

Section 55-79.53. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on

behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55-79.80. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section shall not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a unit owner for nonpayment of assessments in which the unit owner has failed to pay assessments levied by the unit owners' association on more than one unit or such unit owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its executive organ or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent unit owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the unit owners' association, whether any judicial proceedings are filed.

C. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located, or as mutually agreed by the parties.

Section 55-79.54. Contents of declaration.

(a) The declaration for every condominium shall contain the following:

(1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium."

(2) The name of the city or county in which the condominium is located.

(3) A legal description by metes and bounds of the land submitted to this chapter.

(4) A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.

(5) A description or delineation of any limited common elements, other than those which are limited common elements by virtue of subsection (e) of Section 55-79.50, showing or designating the unit or units to which each is assigned.

(6) A description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as limited common elements, together with a statement that (i) they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of Section 55-79.57 or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with Section 55-79.57.

(7) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of Section 55-79.55.

(7a) A statement of the extent of the declarant's obligation to complete improvements labeled "(NOT YET COMPLETED)" or to begin and complete improvements labeled "(NOT YET BEGUN)" on plats recorded pursuant to the requirements of this chapter. Such statement shall be specific as to the type and quality of materials to be used, the size or capacity of the improvements, when material, and the time by which such improvements shall be completed.

(8) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land, the declaration shall also contain the following:

(1) A legal description by metes and bounds of each convertible land within the condominium.

(2) A statement of the maximum number of units that may be created within each such convertible land.

(3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use.

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style.

(5) A description of all other improvements that may be made on each convertible land within the condominium.

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein.

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (1), (4), (5), (6) and (7), and that item (3) need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium, the declaration shall also contain the following:

(1) The explicit reservation of an option to expand the condominium.

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations.

(3) A time limit, not exceeding 10 years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified. After the expiration of any period of declarant control reserved pursuant to subsection (a) of Section 55-79.74, such time limit may be extended by an amendment to the declaration made pursuant to Section 55-79.71.

(4) A legal description by metes and bounds of all land that may be added to the condominium, henceforth referred to as "additional land."

(5) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations.

(6) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be added to the condominium.

(7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard.

(8) A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with item (6), the declaration shall also state the maximum number of units that may be created on each such portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with item (6), then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium.

(9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use.

(10) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

(11) A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard.

(12) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard.

(13) A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5), (6), (7), (10), (11), (12), and (13), and that item (9) need not be complied with if none of the units on the submitted land are restricted exclusively to residential use.

(d) If the condominium is a contractable condominium, the declaration shall also contain the following:

(1) The explicit reservation of an option to contract the condominium.

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations.

(3) A time limit, not exceeding 10 years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified.

(4) A legal description by metes and bounds of all land that may be withdrawn from the condominium, henceforth referred to as “withdrawable land.”

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be withdrawn from the condominium.

(6) A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend.

Provided, that plats may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5), and (6), and that item (6) shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 55-79.72:1.

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth the city or county wherein the same are recorded and the deed book and page number where the first page of each such lease is recorded; and the declaration shall also contain the following:

(1) The date upon which each such lease is due to expire.

(2) A statement as to whether any land and/or improvements will be owned by the unit owners in fee simple, and if so, either (a) a description of the same, including without limitation a legal description by metes and bounds of any such land, or (b) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights.

(3) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights.

Provided, that after the recording of the declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be

deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain the following:

- (1) A description of the permitted use or uses.
- (2) If less than all of those entitled to the use of all of the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization.
- (3) If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estate therein. No such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats.

Section 55-79.55. Allocation of interests in the common elements.

(a) The declaration may allocate to each unit depicted on plats and plans that comply with Section 55-79.58(a) and (b) an undivided interest in the common elements proportionate to either the size or par value of each unit.

(b) Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) hereof shall add up to one if stated as fractions or one hundred per centum if stated as percentages.

(d) If, in accordance with subsection (a) or (b) hereof, an equal undivided interest in the common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) hereof shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing three columns. The first column shall identify the units, listing them serially or grouping them

together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated.

Section 55-79.56. Reallocation of interests in common elements.

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

(1) Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to Section 55-79.58(a) and (b), or

(2) Prohibits the creation of any units not described pursuant to Section 55-79.54(b)(6) (in the case of convertible lands) and Section 55-79.54(c)(12) (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) Interests in the common elements shall not be allocated to any units to be created within any convertible land or within any additional land until plats and plans depicting the same are recorded pursuant to Section 55-79.58(c). But simultaneously with the recording of such plats and plans the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common elements so that the units depicted on such plats and plans shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded simultaneously with the declaration pursuant to Section 55-79.58(a) and (b).

(c) If all of a convertible space is converted into common elements, including without limitation limited common elements, then the undivided interest in the common elements appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the

undivided interest in the common elements appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

Section 55-79.57. Assignments of limited common elements; conversion to common element.

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer or officers as the condominium instruments may specify. The officer or officers to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by the unit owner or unit owners of the unit or units concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgement and recordation thereof. The amendment shall become effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only in pursuance of subdivision (a)(6) of Section 55-79.54. The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer or officers as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgment and recordation thereof. The amendment shall become effective when recorded, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to Section 55-79.54(a)(6) was adhered to. A copy of the amendment shall be delivered to the unit owner or unit owners of the unit or units concerned. If executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not prepared by an officer of the unit owners' association.

D. If the declarant does not prepare and record an amendment to the declaration to effect the assignment of common elements as limited common elements in accordance with

rights reserved in the condominium instruments, but has reflected an intention to make such assignments in deeds conveying units, then the principal officer of the unit owners' association may prepare, execute and record such an amendment at any time after the declarant ceases to be a unit owner.

E. The declarant may unilaterally record an amendment to the declaration converting a limited common element appurtenant to a unit owned by the declarant into a common element as long as the declarant continues to own the unit.

Section 55-79.58. Contents of plats and plans.

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distance between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there be more than one such land the plats shall label each such land with one or more letters and/or numbers different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. The plats shall show the location and dimensions of any additional lands and shall label each such land an additional land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label each such land with one or more letters and/or numbers different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase “(NOT YET BEGUN),” and which, if any, have been begun but have not been substantially completed by the use of the phrase “(NOT YET COMPLETED).” In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and compliance with the provisions of this subsection by a licensed land surveyor, and the said surveyor shall certify in such document or on the face of the plat that all units or portions thereof depicted thereon pursuant to the preceding sentence of this

subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

B. There shall also be recorded, simultaneously with the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of such structures, subject to the following exception: In the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified on their face or in another recorded document as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor, and the said architect, engineer or land surveyor shall certify on the plans or in the recorded document that all units or portions thereof depicted thereon have been substantially completed.

C. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record, with regard to any structures on the land being converted, or added, either plats of survey conforming to the requirements of subsection A and plans conforming to the requirements of subsection B, or certifications, conforming to the certification requirements of said subsections, of plats and plans previously recorded pursuant to Section 55-79.59.

D. Notwithstanding the provisions of subsection A and B, a time-share interest in a unit which has been subjected to a time-share instrument pursuant to Section 55-367 may be conveyed prior to substantial completion of that unit if (i) a completion bond has been filed in compliance with subsection B of Section 55-79.58:1 and remains in full force and effect until the unit is certified as substantially complete in accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to the purchaser in writing, based on information provided by the Common Interest Community Board, that the bond has been filed with the Common Interest Community Board.

E. When converting all or any portion of any convertible space into one or more units and/or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit and/or limited common elements formed out of such space.

Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor.

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of subsection (e) of Section 55-79.50 make such designations unnecessary.

Section 55-79.58:1. Bond to insure completion of improvements.

A. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's obligation as stated in the declaration, of all improvements to the common elements of the condominium labeled in the plat or plats as "(NOT YET COMPLETED)" or "(NOT YET BEGUN)" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of Section 55-79.58. The bond required by this subsection shall be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

C. All bonds required herein shall be executed by a surety company authorized to transact business in the Commonwealth of Virginia or by such other surety as is satisfactory to the Board.

D. The Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section.

Section 55-79.59. Preliminary recordation of plats and plans. Plats and Plans previously recorded pursuant to Section 55-79.54(a), (b) and (c) may be used in lieu of new plats and plans to satisfy in whole or in part the requirements of Section 55-79.56 (b), Section 55-79.61 B and/or Section 55-79.63 if certifications thereof are recorded by the declarant in accordance with Section 55-79.58 A and B; and if such certifications are recorded, the plats and plans which they certify shall be deemed recorded pursuant to Section 55-79.58 C within the meaning of the three sections aforesaid. All condominium instruments for condominiums created prior to July 1, 1991, are hereby validated notwithstanding that the plats were prerecorded as if in compliance with this section and not recorded with amendments converting

convertible land or adding additional land if the plats or subsequent amendments contained the required certifications.

Section 55-79.60. Easement for encroachments. To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

Section 55-79.61. Conversion of convertible lands.

A. The declarant may convert all or any portion of any convertible land into one or more units and/or limited common elements subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B of this section and subsection C of Section 55-79.58.

B. Simultaneously with the recording of plats and plans pursuant to subsection C of Section 55-79.58, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with subsection (b) of Section 55-79.56. Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

C. All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes assessed against the convertible land and any improvements thereon and all other expenses in connection with that real estate, and no other unit owner and no other portion of the condominium shall be subject to a claim for payment of those taxes or expenses, and unless the declaration provides otherwise, any income or proceeds from the convertible land and any improvements thereon shall inure to the declarant. No such conversion shall occur after 10 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

Section 55-79.62. Conversion of convertible spaces.

(a) The declarant may convert all or any portion of any convertible space into one or more units and/or common elements, including, without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any

such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and Section 55-79.58(d).

(b) Simultaneously with the recording of plats and plans pursuant to subsection E of 55-79.58, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with Section 55-79.70(d).

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit.

Section 55-79.63. Expansion of condominium. No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to Section 55-79.58(c), together with an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of Section 55-79.56(b). Such amendment may create convertible or withdrawable lands or both within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to Sections 55-79.54(d)(3) and 55-79.61(c).

Section 55-79.64. Contraction of condominium. No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to Section 55-79.54 (d)(5), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon.

Section 55-79.65. Easement to facilitate conversion and expansion. Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a

transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

Section 55-79.66. Easement to facilitate sales. The declarant and his duly authorized agents, representatives, and employees may maintain sales offices and/or model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size, location, and relocation thereof. Any such sales office or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales office or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

Section 55-79.67. Declarant's obligation to complete and restore.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done thereon or with regard thereto, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion thereof, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

(a1) The declarant shall complete all improvements labeled “(NOT YET COMPLETED)” on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled “(NOT YET BEGUN)” on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(b) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by Sections 55-79.65 and 55-79.66, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

Section 55-79.68. Alterations within units.

(a) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or

alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

(b) If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of Section 55-79.69.

Section 55-79.69. Relocation of boundaries between units.

A. If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify. The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

B. If the unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain conveyancing between those unit owners. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

D. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the unit owners' association allocated to those units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses as between those units.

E. Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a

result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the unit owners of the units involved of all reasonable costs for the preparation, acknowledgment and recordation thereof. Said instruments shall become effective when executed by the unit owners of the units involved and recorded, and the recordation thereof shall be conclusive evidence that the relocation of boundaries thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Any relocation of boundaries between adjoining units shall be governed by this section and not by Section 55-79.70. Section 55-79.70 shall apply only to such subdivisions of units as are intended to result in the creation of two or more new units in place of the subdivided unit.

Section 55-79.70. Subdivision of units.

A. If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify. No unit shall be subdivided unless the condominium instruments expressly permit it.

B. If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections C, D and E.

C. An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common element assigned to the subdivided unit exclusively should be assigned to one or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

D. An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided

unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses formerly appertaining to the subdivided unit.

E. Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the subdivider of all reasonable costs for the preparation, acknowledgment and recordation thereof. Said instruments shall become effective when executed by the subdivider and recorded, and the recordation thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Notwithstanding the definition of "unit" found in Section 55-79.41 and the provisions of Section 55-79.62(d), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section.

Section 55-79.71. Amendment of condominium instruments.

A. If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and the amendment shall become effective upon the recordation thereof if the amendment has been executed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than one year after the amendment is recorded.

D. Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer or officers as the condominium instruments may specify, that the requisite majority of the unit owners signed the amendment or ratifications thereof.

E. Except to the extent expressly permitted or expressly required by other provisions of this chapter, or agreed to by 100 percent of the unit owners, no amendment to the condominium instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners' association that appertains to any unit.

F. Notwithstanding any other provision of this section, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact (including without limitation recalculating the undivided interest in the common elements, the liability for common expenses or the number of votes in the unit owners' association appertaining to a unit), within five years after the recordation of the condominium instrument containing or creating such mistake, inconsistency, error or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of the condominium instruments, the principal officer of the unit owners' association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the executive organ. All corrective amendments and supplements recorded prior to July 1, 1986, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

Section 55-79.71:1. Use of technology.

A. Unless the condominium instruments expressly provide otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. This section shall govern the use of technology in implementing the provisions of any condominium instrument or any provision of this chapter dealing with notices, signatures, votes, consents, or approvals.

B. Electronic transmission and other equivalent methods. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use

of any technological means providing sufficient security, reliability, identification, and verifiability. "Acceptable technological means" shall include without limitation electronic transmission over the Internet or the community or other network, whether by direct connection, intranet, telecopier, or electronic mail.

C. Signature requirements. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any condominium instrument or any provision of this chapter.

D. Voting rights. Voting, consent to and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic transmission or other equivalent technological means provided that a record is created as evidence thereof and maintained as long as such record would be required to be maintained in nonelectronic form.

E. Acknowledgment not required. Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive organ.

F. Nontechnology alternatives. If any person does not have the capability or desire to conduct business using electronic transmission or other equivalent technological means, the unit owners' association shall make reasonable accommodation, at its expense, for such person to conduct business with the unit owners' association without use of such electronic or other means.

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

Section 55-79.71:2. Merger or consolidation of condominiums; procedure.

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement to merge or consolidate two or more condominiums pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, and provided that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

D. If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation shall become effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § 55-79.73:1.

Section 55-79.72. [Repealed]

Section 55-79.72:1. Termination of condominium.

A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. An instrument terminating a condominium shall become effective upon recordation thereof if the termination instrument has been signed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. Except in the case of a taking of all the units by eminent domain, if any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. Agreement of the required majority of unit owners to termination of the condominium shall be evidenced by their execution of a termination agreement, or ratifications thereof, and the same shall become effective when a copy of the termination agreement is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer or officers as the condominium instruments may specify, that the requisite majority of the unit owners signed the termination agreement or ratifications thereof. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the

unit owners' association appertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. For the purposes of this section, an instrument terminating a condominium and any ratification thereof shall be deemed a condominium instrument subject to the provisions of Section 55-79.49.

D. In the case of a condominium that contains only units having horizontal boundaries described in the condominium instruments, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the termination agreement, any property in the condominium is sold following termination, the termination agreement shall set forth the minimum terms of the sale.

E. In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale. In the case of a master condominium that contains a unit which is a part of another condominium, a termination agreement for the master condominium shall not terminate the other condominium.

F. On behalf of the unit owners, the unit owners' association may contract for the disposition of property in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections B and C of this section. If the termination agreement requires that any property in the condominium be sold following termination, title to the property, upon termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to affect the sale. Until the same has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of the unit owners as provided in subsection I of this section. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the period of occupancy by the unit owner or his successor in interest, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

G. If the property that constitutes the condominium is not sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I of this section. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 2, the respective interests of the unit owners shall be the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within thirty days after distribution by unit owners of units to which one-quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

2. If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

J. Except as provided in subsection K, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

Section 55-79.72:2. Rights of mortgagees. No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a

specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.

ARTICLE 3
Management of Condominium

Section 55-79.73. Bylaws to be recorded with declaration; contents; unit owners' association; executive organ; amendment of bylaws.

A. There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive organ. If there is to be such an organ, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive organ shall be filled by a vote of a majority of the remaining members of the executive organ at a meeting of the executive organ, even though the members of the executive organ present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such organ, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive organ may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of Section 55-79.53.

D. In any case where an amendment to the declaration is required by Section 55-79.56(b), (c) or (d), the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to Section 55-79.58 A and B, or shall abolish the votes appertaining to former units, as the case may be. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the said amendment.

Section 55-79.73:1. Amendment to bylaws; consent of mortgagee.

A. In the event that any provision in the condominium instruments requires the written consent of a mortgagee in order to amend the condominium instruments, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt

requested, to the mortgagee at the address supplied by such mortgagee in a written request to the unit owners' association to receive notice of proposed amendments to the condominium instruments and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise. If the mortgagee has not supplied an address to the unit owners' association, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a unit as collateral.

C. Where the condominium instruments are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the condominium instruments does not specifically affect mortgagee rights.

Section 55-79.73:2. Reformation of declaration; judicial procedure.

A. A unit owners' association may petition the circuit court in the county or city wherein the condominium or the greater part thereof is located to reform the condominium instruments where the unit owners' association, acting through its executive organ, has attempted to amend the condominium instruments regarding ownership of legal title of the common elements or real property using provisions outlined therein to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common elements or real property to:

1. Reform, in whole or in part, any provision of the condominium instruments; and
2. Correct mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:

1. The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association;

4. A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

D. Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55-79.73:1.

Section 55-79.74. Control of condominium by declarant.

A. The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association and/or its executive organ, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive organ. The declarant or the managing agent or such other person or persons selected by the declarant to so appoint and remove officers and/or the executive organ or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive organ shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the

calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55-79.92 hereof and described pursuant to subdivision (4) of subsection (a), subdivision (2) of subsection (b), or subdivision (8) of subsection (c), of § 55-79.54.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium, three years in the case of a condominium (other than an expandable condominium) containing any convertible land, or two years in the case of any other condominium. Such time period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § 55-79.75 a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive organ and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § 55-79.79 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.

C. If entered into any time prior to the expiration of the period of declarant control, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive organ upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control. Any such contract or agreement may be renewed for periods not in excess of two years; however, at the end of any two-year period the unit owners' association or its executive organ may terminate any further renewals or extensions thereof. The provisions of this

subsection shall not apply to any lease or leases which are referred to in § 55-79.48 or which are subject to subsection (e) of § 55-79.54.

D. If entered into at any time prior to the expiration of the period of declarant control, any contract, lease or agreement, other than those subject to the provisions of subsection C, may be entered into by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

E. This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments requiring that the unit owners be parties to such contracts.

F. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive organ, or any officer or officers.

G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the city, county or town in which the condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes, local ordinances or other deficiencies of record.

H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant including, without limitation, the following items: minute books and all rules, regulations and amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first election of the board of directors by the unit owners not to exceed 60 days from the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) any contracts in which the association is a contracting party, if any; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the condominium property.

In the event that the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information as required by clauses (i), (ii), (iv), and (vi) of this subsection.

I. This section shall be strictly construed to protect the rights of the unit owners.

Section 55-79.74:01. Deposit of funds.

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners' association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

Section 55-79.74:1. Books, minutes and records; inspection.

A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C and D, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. 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 a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if such books and records 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. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive organ;

5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is 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 executive organ held pursuant to subsection C of § 55-79.75;

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

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

D. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the executive organ in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

Section 55-79.74:2. Management office.

Unless the condominium instruments expressly provide otherwise, the unit owners' association shall not be prohibited from maintaining a management office on common elements or in one or more units in the condominium.

Section 55-79.74:3. Transfer of special declarant rights.

A. No special declarant right may be transferred except by a document evidencing the transfer recorded in every city and county wherein any portion of the condominium is located. The instrument shall not be effective unless executed by the transferee.

B. Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

1. The transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by subsection B of Section 55-79.79. Lack of privity shall not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

2. If the successor to any special declarant right is an affiliate of a declarant, the transferor shall also be jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall also be liable for all obligations and liabilities relating to the retained special declarant rights and imposed on a declarant by this chapter or by the condominium instruments.

4. A transferor shall have no liability for any breach of a contractual or warranty obligation or for any other act or omission, arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Except as otherwise provided by the mortgage or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, tax sale, judicial sale or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of any unit owned by a declarant or land subject to development rights:

1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his request, succeed to all special declarant rights related to that land reserved by that declarant, or only to any rights reserved in the declaration pursuant to Section 55-79.66 and held by that declarant to maintain sales offices, management offices, model units and/or signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

For the purposes of this subsection, "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land or convert convertible space.

D. Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of all units and other land in the condominium owned by a declarant (i) that declarant ceases to have any special declarant rights, and (ii) any period of declarant control reserved under subsection A of Section 55-79.74 shall terminate, unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The liabilities and obligations of any person or persons who succeed to any special declarant right shall be as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the condominium instruments.

2. A successor to any special declarant right, other than a successor described in subdivisions 3 and 4 of this subsection, who is not an affiliate of a declarant shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments on a declarant, which relate to his exercise or nonexercise of special declarant rights, or on his transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as provided in subsection B of Section 55-79.79 on improvements made by any previous declarant or made before the condominium was created, (iii) breach of any fiduciary obligation by any previous declarant or his appointees to the executive organ, or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the declaration to maintain sales offices, management offices, model units and/or signs shall not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except the liabilities and obligations arising under Article 4 (Section 55-79.86 et seq.) of this chapter as to disposition by that successor.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection C hereof may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right reserved by his transferor pursuant to subsection A of Section 55-79.74. Any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he shall not be subject to any liability or obligation as a declarant other than liability for his acts and omissions relating to the exercise of rights reserved under subsection A of Section 55-79.74.

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the condominium instruments.

G. For the purposes of this section, "affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is general partner, officer, director or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests in the declarant, (iii) controls in any manner the election of

a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant (i) is a general partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than twenty percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

Section 55-79.74:4. Declarants not succeeding to special declarant rights.

A declarant who does not succeed to any special declarant rights shall be liable only to the extent of his actions for claims and obligations arising under this chapter or the condominium instruments.

Section 55-79.75. Meetings of unit owners' associations and executive organs.

A. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all unit owners of record at the address of their respective units unless the unit owner has provided to such officer or his agent an address other than the address of the unit; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

In lieu of delivering notice as specified in the preceding paragraph of this subsection, such officer or his agent may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the unit owner to whom the notice is given, provided the officer or his agent certifies in writing that notice was sent.

B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules

adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

Notice of the time, date and place of each meeting of the executive organ or of any subcommittee or other committee thereof, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

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

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the (i) executive organ or any subcommittee or other committee thereof or (ii) subcommittee or other committee of the unit owners' association 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 the executive organ or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive organ.

Any unit owner may record any portion of a meeting required to be open. The executive organ or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

If a meeting of the executive organ is conducted by telephone conference or video conference or similar electronic means, at least two board members shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any board member participating in the meeting who is not physically present.

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

C. The executive organ or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the

condominium instruments or rules and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' 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 executive organ 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 executive organ or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive organ may limit the comments of unit owners to the topics listed on the meeting agenda.

Section 55-79.75:1. Distribution of information by members.

A. The executive organ shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive organ regarding any matter concerning the unit owners' association.

B. Except as otherwise provided in the condominium instruments, the executive organ shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

Section 55-79.75:2. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005, no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit owner from displaying upon property to which the unit owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the unit owners' association.

B. The unit owners' association may restrict the display of such flags in the common elements.

C. In any action brought by the unit owners' association under Section 55-79.80:2 for a violation of a flag restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the unit owners' association.

D. In any action brought by the unit owners' association under Section 55-79.80:2, the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to the flag of the United States or any flagpole or similar structure necessary to display the flag of the United States was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to Section 55-79.90 or 55-79.97.

Section 55-79.76. Same; quorums.

(a) Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than thirty-three and one-third percent of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 10 percent.

(b) Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive organ if persons entitled to cast one half of the votes in that body are present at the beginning of such meeting.

Section 55-79.77. Same; voting.

A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A and B of Section 55-79.58 a number of votes in the unit owners' association proportionate to the undivided interest in the common elements appertaining to each such unit.

B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

C. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on

behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Except to the extent otherwise provided in the condominium instruments, any proxy shall be void if it is not dated, or if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed. To the extent the condominium instruments or rules adopted thereto expressly so provide, a vote or proxy may be submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the unit owner or the unit owner's proxy.

E. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

F. All votes appertaining to units owned by the unit owners' association shall be deemed present for quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in the same proportions as the votes cast by unit owners other than the unit owners' association.

Section 55-79.78. Officers.

A. If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee shall be deemed to have disqualified himself from continuing in the office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

B. If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of Section 55-79.50(a), the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to

have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection A were it a natural person holding such office.

Section 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty.

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for two years from the date each is conveyed, and all of the common elements for two years. In the case of each unit the declarant shall also warrant that the unit is fit for habitation and constructed in a workmanlike manner so as to pass without objection in the trade. The two years referred to in this subsection shall begin as to each of the common elements whenever the same has been completed or, if later, (i) as to any common element within any additional land or portion thereof, at the time the first unit therein is conveyed, (ii) as to any common element within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (iii) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall be commenced within (i) five years after the date such warranty period began or (ii) one year after the formation of any warranty review committee pursuant to subsection B of § 55-79.74, whichever last occurs. However, no such action shall be maintained against the declarant unless a written statement by the claimant or his agent, attorney or representative, of the nature of the alleged defect has been sent to the declarant, by registered or certified mail, at his last known

address, as reflected in the records of the Common Interest Community Board, more than six months prior to the commencement of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, not to exceed five months. Sending the notice required by this subsection shall toll the statute of limitations for commencing a breach of warranty action for a period not to exceed six months. [Legislative Note: The provisions of this subsection as amended in 2006, pertaining to the written statement to the declarant, apply only to breach of warranty claims arising on or after January 1, 2007.]

D. If the initial period of declarant control has been extended in accordance with subsection B of § 55-79.74, the warranty review committee (the committee) shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to § 55-79.83 if the committee determines that the assessments levied by the unit owners' association are insufficient to enable the committee reasonably to perform its functions pursuant to this subsection. The committee or the declarant shall notify the governing body of the county, city, or town in which the condominium is located of the formation of the committee, within 30 days of its formation. Within 30 days after such notice, the local governing body or an agency designated by the local governing body shall advise the chair of the committee of any outstanding violations of applicable building codes, local ordinances, or other deficiencies of record. Members of the committee shall be insured, indemnified, and subject to liability to the same extent as officers or directors under the condominium instruments or applicable law. The unit owners' association shall provide sufficient funds reasonably necessary for the committee to perform the functions set out in this subsection and to:

1. Engage an independent architect, engineer, legal counsel, and such other experts as the committee may reasonably determine;

2. Investigate whether there exists any breach of the warranty as to any of the common elements. The committee shall document its findings and the evidence that supports such findings. Such findings and evidence shall be confidential and shall not be disclosed to the declarant without the consent of the committee; and

3. Assert or settle in the name of the unit owners' association any claims involving the declarant's warranty on the common elements, provided (i) the committee sends the declarant at least six months prior to the expiration of the statute of limitations a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect, (ii) the declarant fails to cure the alleged defect within a reasonable time, and (iii) the declarant control period or the statute of limitations has not expired.

E. Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or as-build plans if available; (ii) all association insurance

policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

Section 55-79.80. Control of common elements.

A. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the unit owners' association shall have the power to:

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the said association arising under Section 55-79.79.

2. Make or cause to be made additional improvements on and as a part of the common elements.

3. Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit which would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval.

4. Acquire, hold, convey, and encumber title to real property, including but not limited to condominium units, whether or not the association is incorporated.

B. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive organ of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, including without limitation the right, in the name of the unit owners' association, (i) to grant easements through the common elements and accept easements benefitting the condominium or any portion thereof, (ii) to assert, through litigation or otherwise, defend against, compromise, adjust, and settle any claims or actions related to common elements, other than claims against or actions involving the declarant during any period of declarant control reserved pursuant to Section 55-79.74A, and (iii) and apply for any governmental approvals under state and local law.

C. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

Section 55-79.80:01. Common elements; notice of pesticide application.

Unit owners' associations shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least forty-eight hours prior to the application.

Section 55-79.80:1. Tort and contract liability; judgment lien.

A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant or of the unit owners' association, or (ii) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of his ownership of an undivided interest in the common elements or by reason of his membership in the association or his status as an officer.

B. Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by Sections 55-79.65 or 55-79.66.

C. An action arising from a contract made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to Section 55-79.74A. No unit owner shall be precluded from bringing such an action by reason of his membership in the association or his status as an officer.

D. A judgment for money against the unit owners' association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to Section 55-79.83 D, but not against any other property of any unit owner. A unit owner who pays a percentage of the total amount due under such judgment equal to such unit owner's liability for common expenses fixed pursuant to Section 55-79.83 D shall be entitled to a release of any such judgment lien and the association shall not be entitled to assess the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to the provisions of Section 8.01-458.

Section 55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules.

A. The unit owners' association shall have the power, to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided

that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests or other invitees are responsible.

B. Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55-79.75. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75.

C. The amount of any charges so assessed shall not exceed \$50 for a single offense, or \$10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55-79.84. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

D. The unit owners' association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or duly adopted rules and regulations.

E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit owners' association, by and through its counsel to collect the charges or obtain injunctive relief and correct the violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

If the court rules in favor of the unit owners' association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any suit filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the unit owners' association's sworn affidavit.

F. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

Section 55-79.80:3. Power of unit owners' association to limit occupancy of a unit.

The unit owners' association shall have the power, to the extent the condominium instruments expressly so provide, to limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of Section 55-79.52.

Section 55-79.81. Insurance.

A. The condominium instruments may require the unit owners' association, or the executive organ or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements.

2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium.

3. Such other policies as may be required by the condominium instruments, including, without limitation, workers' compensation insurance, liability insurance on motor vehicles owned by the unit owners' association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the unit owners' association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the unit owners' association, or committed by any common interest community manager or employees of the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$1 million or the amount of reserve balances of the unit owners' association plus one-fourth of the aggregate annual assessment of such unit owners' association. The minimum coverage amount shall be \$10,000. The executive organ or common interest community manager may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer

required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of Section 55-79.75.

Section 55-79.82. [Repealed]

Section 55-79.83. Liability for common expenses; late fees.

A. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

B. To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases. The executive organ may impose reasonable user fees.

C. To the extent that the condominium instruments expressly so provide, (i) any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved and (ii) any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C hereof shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § 55-79.77, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

E. Except to the extent otherwise provided in the condominium instruments, if the executive organ determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive organ shall have the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive organ shall give

written notice of any additional assessment to the unit owners stating the amount, reasons therefor, and the due date for payment of such assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

All unit owners shall be obligated to pay the additional assessment unless the unit owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the additional assessment. No director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners' association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

F. It remains the policy of this section that neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner thereof.

G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby validated notwithstanding noncompliance with the first sentence of subsection D hereof, if they provide instead that the amount of all common expenses not specially assessed pursuant to subsection A, B, or C hereof shall be assessed against the condominium units in proportion to their respective undivided interests in the common elements.

H. Except to the extent that the condominium instruments or rules or regulations promulgated pursuant thereto provide otherwise, an executive organ may impose a late fee, not to exceed the penalty provided in § 58.1-3915, for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.

Section 55-79.83:1. Reserves for capital components.

A. Except to the extent otherwise provided in the condominium instruments and unless the condominium instruments impose more stringent requirements, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect.

Section 55-79.84. Lien for assessments.

A. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The said lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. The unit owners' association, in order to perfect the lien given by this section, shall file before the expiration of 90 days from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

1. A description of the condominium unit in accordance with the provisions of Section 55-79.47.

2. The name or names of the persons constituting the unit owners of that condominium unit.

3. The amount of unpaid assessments currently due or past due together with the date when each fell due.

4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinabove provided to record and index the same as provided in subsection B, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

D. No suit to enforce any lien perfected under subsection C shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

E. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, said lien shall be released in accordance with the provisions of Section 55-66.3. Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A (1) of Section 55-66.3. For the purposes of that section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to Section 55-79.53.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive organ, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens. For purposes of this section, the unit owners' association shall have the power both to sell and convey the unit, and shall be deemed the unit owner's statutory agent for the purpose of transferring title to the unit. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The unit owners' association shall give notice to the unit owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in the circuit court of the county or city where the condominium is located to assert the nonexistence of a debt or any other defense of the unit owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the condominium is located. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection C, in the names of the persons identified therein as well as in the name of the unit owners' association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner: (a) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorneys' fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date and place of any proposed sale in execution of the lien, and including the name, address and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement which is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the unit owners' association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 of

this section and Section 26-15. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association, its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorneys' fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale thereof or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to Section 26-15 and every account of a sale shall be recorded pursuant to Section 26-16. In addition, the accounting shall be made available for inspection and copying pursuant to Section 55-79.74:1 upon the written request of the prior unit owner, current unit owner or any holder of a recorded lien against the unit at the time of the sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

Section 55-79.84:1. Bond to be posted by declarant.

A. The declarant of a condominium containing units which are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than ten percent of the units in the condominium or, if the declarant owns less than ten percent of the units in the condominium, until the declarant is current in the

payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth, or by such other surety as is satisfactory to the Board and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

C. The Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section.

Section 55-79.85. Restraints on alienation.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of the condominium units, such rights and restraints shall be void unless the condominium instruments make provision for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, the executive organ, and every unit owner. Payment of a fee not exceeding twenty-five dollars may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

ARTICLE 4

Administration of Chapter; Sale, etc., of Condominium Units

Section 55-79.86. Administrative agency. This act shall be administered by the Common Interest Community Board which hereinafter is called the agency.

Section 55-79.87. Exemptions from certain provisions of article.

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of Sections 55-79.88 through 55-79.93, subsections A and C of Section 55-79.94, and Section 55-79.97 do not apply to:

1. Dispositions pursuant to court order;
2. Dispositions by any government or government agency;
3. Offers by the declarant on nonbinding reservation agreements;

4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or

5. A disposition of a unit by a sale at an auction, where the resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of Sections 55-79.88 through 55-79.95 shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

Section 55-79.88. Limitations on dispositions of units.

Unless exempt by § 55-79.87:

1. No declarant may offer or dispose of any interest in a condominium unit located in this Commonwealth, nor offer or dispose in this Commonwealth of any interest in a condominium unit located without this Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within five calendar days from the contract date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice thereof hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12 point type.

Section 55-79.89. Application for registration; fee.

A. The application for registration of the condominium shall be filed as prescribed by the agency's regulations and shall contain the following documents and information:

1. An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name, address, and the form, date, and jurisdiction or organization; and the address of each of its offices in this Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the condominium as of a specified date within thirty days of the filing of the application;

5. A statement, in a form acceptable to the agency, of the condition of the title to the condominium project including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the agency;

6. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign;

7. Copies of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance or access of all or part of the condominium;

8. A statement of the zoning and other governmental regulations affecting the use of the condominium, including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments which affect the condominium;

9. A narrative description of the promotional plan for the disposition of the units in the condominium;

10. Plats and plans of the condominium that comply with the provisions of Section 55-79.58 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the agency may establish by regulation or order requirements in lieu of the provisions of Section 55-79.58 for plats and plans of a condominium located outside this Commonwealth;

11. The proposed public offering statement;

12. Any bonds required to be posted pursuant to the provisions of this chapter; and

13. Any other information, including any current financial statement, which the agency by its regulations requires for the protection of purchasers.

B. If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

C. The declarant shall immediately report any material changes in the information contained in an application for registration.

D. Each application shall be accompanied by a fee in an amount established by the agency pursuant to Section 54.1-113. All fees shall be remitted by the agency to the State Treasurer, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to Section 55-529.

Section 55-79.90. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following:

1. The name and principal address of the declarant and the condominium;
2. A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;
3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;
4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;
5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;
6. The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;
7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;
8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § 55-79.79;

9. A statement that, pursuant to subdivision A 2 of § 55-79.88, the purchaser may cancel the disposition within five calendar days of delivery of the current public offering statement or within five calendar days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium which are planned but not yet begun, or begun but not yet completed. Said statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

11. If the units in the condominium are being subjected to a time-share instrument pursuant to § 55-367, the information required to be disclosed by § 55-374;

12. A statement listing the facilities or amenities which are defined as common elements or limited common elements in the condominium instruments, which are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities which are not included as part of any assessment, and the amount of such fees or charges, if any, a purchaser may be required to pay;

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

14. 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, but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag; and

15. Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

C. The agency may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

D. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the

preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

Section 55-79.91. Inquiry and examination. Upon receipt of an application for registration, the agency shall conduct an examination of the material submitted to determine that:

1. The declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;
2. There is reasonable assurance that all proposed improvements will be completed as represented;
3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the agency in its regulations and afford full and fair disclosure;
4. The declarant has not, or if a corporation, its officers, and principals have not, been convicted of a crime involving the condominium unit dispositions or any aspect of the land sales business in this Commonwealth, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land disposition; and
5. The public offering statement requirements of this chapter have been satisfied.

Section 55-79.92. Notice of filing and registration.

A. Upon receipt of the application for registration, the agency shall, within five business days, issue a notice of filing to the applicant. In the case of receipt of an application for a condominium that is a conversion condominium, the agency shall, within five business days, also issue a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, which notice shall include the name and address of the applicant and the name and address or location of the proposed condominium. Within sixty days from the date of the notice of filing, the agency shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within sixty days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the agency affirmatively determines, upon inquiry and examination, that the requirements of Sections 55-79.89 and 55-79.91 have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

C. If the agency determines upon inquiry and examination that any of the requirements of Sections 55-79.89 and 55-79.91 have not been met, the agency shall notify the applicant that the application for registration must be corrected in the particulars specified within

twenty days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days after issuance of the order. During this twenty-day period the applicant may petition for reconsideration and shall be entitled to a hearing or correct the particulars specified in the agency's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, is given to the applicant.

Section 55-79.93. Annual report by declarant; termination of registration.

The declarant shall file a report in the form prescribed by the regulations of the agency within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

Section 55-79.93:1. Annual report by unit owners' association.

A. The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of the declarant control period pursuant to Section 55-79.74. The annual report shall be accompanied by a fixed fee in an amount established by the agency.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

C. The unit owners association shall also remit to the agency an annual payment as follows:

1. The lesser of:

a. \$1,000 or such other amount as established by agency regulation; or

b. Five hundredths of one percent (0.05%) of the unit owners' association's gross assessment income during the preceding year.

2. For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.

D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to Section 55-529.

Section 55-79.93:2. Termination of registration.

A. In the event that all of the units in the condominium have been disposed of, and that all periods for conversion or expansion have expired, the agency shall issue an order terminating the registration of the condominium.

B. Notwithstanding any other provision of this chapter, the agency may administratively terminate the registration of a condominium if:

1. The declarant has not filed an annual report in accordance with Section 55-79.93 for three or more consecutive years; or

2. The declarant's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

Section 55-79.94. Conversion condominiums; special provisions.

A. Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of Section 55-79.90 the following:

1. A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee;

2. Information on the actual expenditures made on all repairs, maintenance, operation or upkeep of the subject building or buildings within the last three years, set forth tabularly with the proposed budget of the condominium, and cumulatively broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the maximum period such building or buildings have been occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

4. A statement of the declarant as to the present condition of all structural components and major utility installations in the condominium, which statement shall include the approximate dates of construction, installation, and major repairs, and the expected useful life of each such item, together with the estimated cost (in current dollars) of replacing each of the same.

5. If any building included or that may be included in the condominium was substantially completed prior to July 1, 1978, a statement that each such building has been inspected for asbestos in accordance with standards in effect at the time of inspection; or that an asbestos inspection will be conducted; and whether asbestos requiring response actions has been found, and if found, that response actions have been or will be completed in accordance with

applicable standards prior to the conveyance of any unit in such building. Any asbestos management program or response action undertaken by the building owner shall comply with the standards promulgated pursuant to Section 2.1-526.14:2.

B. In the case of a conversion condominium, the declarant shall give at the time specified in subsection C of this section, formal notice to each of the tenants of the building or buildings which the declarant has submitted or intends to submit to the provisions of this chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies, (ii) the projected common expense assessments against that unit for at least the first year of the condominium's operation, (iii) any relocation services or assistance, public or private, of which the declarant is aware, (iv) any measures taken or to be taken by the declarant to reduce the incidence of tenant dislocation, and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. During the first sixty days after such notice is mailed or hand delivered, each of the said tenants shall have the exclusive right to purchase the unit he occupies, but only if such unit is to be retained in the conversion condominium without substantial alteration in its physical layout. If the conversion condominium is subject to local ordinances that have been adopted pursuant to subsections F and G, any tenant who is disabled or elderly may assign the exclusive right to purchase his unit to a government agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent, following the provisions of subsection F. The acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (i) exceed the greater of one unit or five percent of the total number of units in the condominium or (ii) impede the condominium conversion process. In determining which, if any, units shall be acquired pursuant to this subsection, preference shall be given to elderly or disabled tenants.

The notice required above shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the conversion to condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in Section 55-222, except that, despite the provisions of Section 55-222, a tenancy from month to month may only be terminated upon 120 days' notice when such termination is in regard to the creation of a conversion condominium. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the declarant, in order to then terminate the tenancy, such declarant shall give the tenant a further notice as provided in Section 55-222. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided by subsection A of Section 55-248.18 and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations or improvements, provided (i) the making of the same does not constitute an actual or constructive eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. The declarant shall also provide general notice to the tenants of the condominium or proposed condominium at the time of application to the agency in addition to the formal notice required by this subsection.

C. The declarant of a conversion condominium shall, in addition to the requirements of Section 55-79.89, include with the application for registration a copy of the formal notice set forth in subsection B and a certified statement that such notice, fully complying with the provisions of subsection B, shall be, at the time of the registration of such condominium, mailed

or delivered to each of the tenants in the building or buildings for which registration is sought. The price and projected common expense assessments for each unit need not be filed with the agency until such notice is mailed to the tenants.

D. Notwithstanding the provisions of Section 55-79.40 of this chapter, in the case of any conversion condominium created under the provisions of the Horizontal Property Act (Section 55-79.1 et seq.) for which a final report has not been issued by the agency pursuant to Section 55-79.21 prior to June 1, 1975, the provisions of subsections A and B of this section shall apply and the declarant shall be required to furnish evidence of full compliance with subsections A and B prior to the issuance by the agency of a final report for such conversion condominium.

E. Any county, city or town may require by ordinance that the declarant of a conversion condominium file with that governing body all information which is required by the agency pursuant to Section 55-79.89 and a copy of the formal notice required by subsection B. Such information shall be filed with that governing body when the application for registration is filed with the agency, and such copy of the formal notice shall be filed with that governing body. There shall be no fees for such filings.

F. The governing body of any county, city or town may enact an ordinance requiring that elderly or disabled tenants occupying as their residence, at the time of issuance of the general notice required by subsection B, apartments or units in a conversion condominium be offered leases or extensions of leases on the apartments or units they then occupied, or on other apartments or units of at least equal size and overall quality. The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion condominium and such lease shall include or incorporate by reference the bylaws and/or rules and regulations, if any, of the association. No such ordinance may require that such leases or extensions be offered on more than twenty percent of the apartments or units in such conversion condominium, nor may any such ordinance require that such leases or extensions extend beyond three years from the date of such notice. Such leases or extensions shall not be required, however, in the case of any apartments or units which will, in the course of the conversion, be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

For the purposes of this section:

“Affordable rent” means a monthly rent that does not exceed the greater of 30 percent of the annual gross income of the tenant household or 30 percent of the imputed income limit applicable to such unit size, as published by the Virginia Housing Development Authority for compliance with the Low Income Housing Tax Credit program.

“Certified nonprofit housing corporation” means a nonprofit organization exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code that has been certified by a

locality as actively engaged in producing or preserving affordable housing as determined by criteria established by the locality.

“Disabled” means a person suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

“Elderly” means a person not less than 62 years of age.

G. The governing body of any county utilizing the urban county executive form of optional government (Sections 15.2-800 through 15.2-858) or the county manager plan of optional government (Sections 15.2-702 through 15.2-749), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential condominium converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount which the tenant would have been entitled to receive under Sections 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Transportation.

Section 55-79.95. Escrow of deposits.

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose which is federally insured and located in Virginia; except where such deposits are being held by a real estate broker or attorney licensed under the laws of this Commonwealth such funds may be placed in that broker’s or attorney’s regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

B. In lieu of escrowing deposits as provided in subsection A, the declarant of a condominium consisting of more than 50 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth below, or
2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth below.

The surety bond or letter of credit shall be maintained until (i) the granting of a deed to the unit, (ii) the purchaser’s default under a purchase contract for the unit entitling the declarant to retain the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The declarant shall file the bond with the Common Interest Community Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the declarant or, if the total amount of the deposits

accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket bond shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;
4. \$500,000 or more but less than \$1,000,000, the blanket bond shall be \$1,000,000;

and

5. \$1,000,000 or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket letter of credit shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;
4. \$500,000 or more but less than \$1,000,000, the blanket letter of credit shall be \$1,000,000; and

5. \$1,000,000 or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a declarant maintains in any calendar year, the total amount of deposits considered held by the declarant shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

Section 55-79.96. Declarant to deliver declaration, etc., to purchaser. The declarant shall within ten days of recordation of the condominium instruments as provided for in

Sections 55-79.45 and 55-79.49 hereof, forward to each purchaser at his last known address by first class mail, return receipt requested, an exact copy of the recorded declaration and bylaws.

Section 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Parcel Service, and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

- a. Hand delivery;
- b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;
- c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent

by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery;
or

d. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and, if applicable, an appropriate statement pursuant to § 55-79.85;
2. A statement of any expenditure of funds approved by the unit owners' association or the executive organ which shall require 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 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 thereof, 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 organ;
6. A copy of the unit owners' association's current budget or a summary thereof 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 suits or unpaid judgments to which the unit owners' association is a party which either could or would have a material impact on the unit owners' association or the unit owners or which 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 thereto;

11. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

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 organ 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 § 55-79.93:1; which certification shall indicate 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, but not limited to 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; and

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

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.

The resale certificate shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or his 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. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or his 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 his authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or his 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 his 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 his authorized agent to pay any fees to use the provider's electronic network or system. If the seller or his authorized agent asks that the resale certificate be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the resale certificate in electronic format at no additional charge.

E. Subject to the provisions of § 55-79.87, 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 (§ 55-79.1 et seq.).

F. The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs;
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

Section 55-79.97:1. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed \$100;

2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of \$125, for an electronic copy 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 requestor. Only one fee shall be charged for the preparation and delivery of the resale certificate;

3. At the option of the seller or his authorized agent, with the consent of the unit owners' association or the common interest community manager, expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed \$50;

4. At the option of the seller or his authorized agent, an additional hard copy of the resale certificate, a fee not to exceed \$25 per hard copy;

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the resale certificate; and

6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee not to exceed \$50.

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83, if not paid at settlement or within 45 days of the delivery of the resale certificate, whichever occurs first.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the resale certificate are completed within five business days of the request for a resale certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website. The unit owners' association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or his authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the

preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requestor, payable at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 45 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent or the purchaser or his authorized agent, may request a resale certificate update. The requestor shall specify whether the resale certificate update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate

update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the unit owners' association. If the requestor asks that the specified update be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners' association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

Section 55-79.97:2. Properties subject to more than one declaration.

If the unit is subject to more than one declaration, the unit owners' association or its common interest community manager may charge a fee authorized by Section 55-79.97:1 for each of the applicable associations, provided however, that no association may charge an inspection fee unless the association has architectural control over the unit.

Section 55-79.97:3. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the resale certificate. The preparer of the resale certificate shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association of the common interest community manager. There shall be not fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions; however a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the unit owners' association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the resale certificate with (i) the complete record name of the seller, (ii) the address of the subject unit, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement, unless otherwise prohibited.

Section 55-79.98. General powers and duties of the Common Interest Community Board.

A. The agency shall prescribe reasonable rules and regulations which shall be adopted, amended or repealed in compliance with law applicable to the administrative procedure of agencies of government. The rules and regulations shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and other rules and regulations as are necessary and proper to accomplish the purpose of this chapter.

B. The agency by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution.

C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the agency, with or without prior administrative proceedings may bring an action in the circuit court of the city or county in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief of temporary restraining orders shall be granted. The agency is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

D. With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with subdivision A 1 of Section 55-79.89, the agency shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or any annual report.

E. The agency may intervene in any suit involving the declarant. In any suit by or against a declarant involving a condominium, the declarant shall promptly furnish the agency notice of the suit and copies of all pleadings.

F. The agency may:

1. Accept registrations filed in other states or with the federal government;
2. Contract with similar agencies in this Commonwealth or other jurisdictions to perform investigative functions;

3. Accept grants in aid from any governmental source.

G. The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

Section 55-79.99. Investigations and proceedings.

A. Whenever the agency receives a written complaint which appears to state a valid claim, the agency shall make necessary public or private investigations in accordance with law within or outside of this Commonwealth to determine whether any declarant, its agents, employees or other representatives have violated or are about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules, regulations and forms hereunder. The agency may also in like manner and with like authority investigate written complaints against persons other than the declarant, its agents, employees or other representatives.

B. For the purpose of any investigation or proceeding under this chapter, the agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

Section 55-79.100. Cease and desist orders.

(a) If the agency determines after notice and hearing that a person has:

(1) Violated any provision of this chapter;

(2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

(3) Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency;

(4) Disposed of any units which have not been registered with the agency; or

(5) Violated any lawful order or rule of the agency; it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this chapter.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include, in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

Section 55-79.101. Revocation of registration.

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has:

- (1) Failed to comply with the terms of a cease and desist order;
- (2) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;
- (4) Failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or
- (5) Made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the agency finds after notice and hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

Section 55-79.102. Judicial review. Proceedings for judicial review shall be in accordance with the provisions of the Administrative Process Act (Section 9-6.14:1 et seq.).

Section 55-79.103. Penalties. Any person who willfully violates any provision of Section 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, or any rule adopted under or order issued pursuant to Section 55-79.98, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be guilty of a misdemeanor and may be fined not less than one thousand dollars or double the amount of gain from the transaction, whichever is the larger but not more than fifty thousand dollars; or he may be imprisoned for not more than six months; or both, for each offense.

PROPERTY OWNERS' ASSOCIATION ACT

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PROPERTY OWNERS' ASSOCIATION ACT

ARTICLE 1 General Provisions

Section 55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration, as defined herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the former Subdivided Land Sales Act (Section 55-336 et seq.). For the purposes of this chapter, as used in the former Subdivided Land Sales Act, the terms:

“Subdivision” shall be deemed to correspond with the term “development”;

“Developer” shall be deemed to correspond with the term “declarant”;

“Lot” shall be deemed to correspond with the term “lot”; and

“Covenants”, “deed restrictions”, or “other recorded instruments” for the management, regulation and control of a development shall be deemed to correspond with the term “declaration”.

This chapter shall be deemed to supersede the former Subdivided Land Sales Act (Section 55-336 et seq.), and no development shall be established under the latter on or after July 1, 1998. This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998; however, any development established prior to the enactment of the former Subdivided Land Sales Act may specifically provide for the applicability of the provisions of this chapter.

This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (Section 55-79.39 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (Section 55-424 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (Section 55-360 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (Section 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public.

Section 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.

“Capital components” means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

“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.

“Common interest community” means the same as that term as defined in Section 55.528.

“Common interest community manager” means the same as that term is defined in Section 54.1-2345.

“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 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 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.

“Disclosure packet update” means an update of the financial information referenced in subdivisions A 2 through A 9 of Section 55-509.5. The update shall include a copy of the original disclosure packet.

“Financial update” means an update of the financial information referenced in subdivisions A 2 through A 7 of Section 55-509.5.

“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.

“Meeting” or “meetings” means the formal gathering of the board of directors where the business of the association is discussed or transacted.

“Professionally managed” means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

“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.

“Settlement agent” means the same as that term is defined in Section 6.1-2.20.

Section 55-509.1. Developer to pay real estate taxes attributable to the common area upon transfer to association.

Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in Section 58.1-3284.1 through the date of the transfer to the association.

Section 55-509.1:1. Limitation on certain contracts and leases by declarant.

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days’ written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a

group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions thereof.

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

D. This section shall be strictly construed to protect the rights of the lot owners.

[The provisions of Section 55-509.1:1 shall apply only to contracts or leases entered into on or after July 1, 2012.]

Section 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 other than the declarant 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 from the date of the recording of the association documents 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 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies which are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property; and (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors.

If the association is managed by a common interest community manager in which the declarant, or its principals, has no pecuniary interest or management role, then such common interest community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), (vi), and (viii).

Section 55-509.3. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55-509.6 or 55-509.7 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55-509.6 or 55-509.7.

ARTICLE 2
Disclosure Requirements; Authorized Fees

Section 55-509.4. Contract disclosure statement; right of cancellation.

A. Subject to the provisions of subsection A of § 55-509.10, a person selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (a) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c) written notice has been provided by the association that a packet is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that

the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Parcel Service, and a receipt obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

1. Hand delivery;
2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;
3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or
4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.

D. Whenever any contract is canceled based on a failure to comply with subsection A or C or pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.

E. Any rights of the purchaser to cancel the contract provided by this chapter are waived conclusively if not exercised prior to settlement.

F. Except as expressly provided in this chapter, the provisions of this section and § 55-509.5 may not be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

Section 55-509.5. Contents of association disclosure packet; delivery of packet.

A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or his authorized agent, an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as

of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;
2. A statement of any expenditure of funds approved by the association or the board of directors that shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;
3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;
4. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;
5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;
6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;
7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that relates to the lot being purchased;
8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including the fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;
10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

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

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

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

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

16. A copy of the fully completed one-page cover sheet developed by the Common Interest Community Board pursuant to § 54.1-2350;

17. Certification that the association has filed with the Common Interest Community Board the annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing; and

18. 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 his 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 within the meaning of § 13.1-501.

D. The seller or his 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 his authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or his 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 his 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 his authorized agent to pay any fees to use the provider's electronic network or system. If the seller or his authorized agent asks that the disclosure packet be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the disclosure packet in electronic format at no additional charge.

Section 55-509.6. Fees for disclosure packet; associations managed by a common interest community manager.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55-509.5, and for such other services as set out in this section. The seller or his authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or his authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent.

B. A reasonable fee may be charged by the preparer as follows for:

1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed \$100;

2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an electronic copy 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 requestor. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

3. At the option of the seller or his authorized agent, with the consent of the association or the common interest community manager, expediting the inspection, preparation and delivery of the disclosure packet, an additional expedite fee not to exceed \$50;

4. At the option of the seller or his authorized agent, an additional hard copy of the disclosure packet, a fee not to exceed \$25 per hard copy;

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet; and

6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed \$50.

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516, if not paid at settlement or within 45 days of the delivery of the disclosure packet, whichever occurs first.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the disclosure packet are completed within five business days of the request for a disclosure packet.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. No additional fee shall be charged for access to the association's or common interest community manager's website. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or his authorized agent will know such fees at the time of requesting the packet.

D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the association disclosure packet, except for the costs of any disclosure packet update or financial update, which costs shall be the responsibility of the requestor, payable at settlement. Neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time of the request is made for the association disclosure packet.

E. If settlement does not occur within 45 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the association or the common interest community manager perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. No association or common interest community manager may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requestor asks that the specified update be provided in electronic format, neither the association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When an association disclosure packet has been delivered as required by § 55-509.5, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55-509.5, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws,

rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

Section 55-509.7. Fees for disclosure packets; associations not professionally managed.

A. An association that is not professionally managed may charge a fee for the preparation and issuance of the association disclosure packet required by Section 55-509.5. Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify whether the association disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent. The association shall advise the requestor if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

B. No fees other than those specified in this section shall be charged by the association for compliance with its duties and responsibilities under this section. Any fees charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and Section 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

C. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request therefor.

D. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request therefor.

E. A reasonable fee for the disclosure packet update or a financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the association perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed \$50. Any fees charged for the specified update shall be collected at the time of delivery of the update. The

association shall not require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

F. No association may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requestor asks that the specified update be provided in electronic format, the association shall not require the requester to pay any fees to use the provider's electronic network or system. If the requestor asks that the specified update be provided in electronic format, the requestor may designate no more than two additional recipients to receive the specified update in electronic format at no additional charge. A copy of the specified update shall be provided to the seller or his authorized agent.

G. When a disclosure packet has been delivered as required by Section 55-509.5, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

H. If the association has been requested to furnish the association disclosure packet required by this section, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

Section 55-509.8. Properties subject to more than one declaration.

If the lot is subject to more than one declaration, the association or its common interest community manager may charge the fees authorized by Section 55-509.6 or 55-509.7 for each of the applicable associations, provided however, that no association shall charge inspection fees unless the association has architectural control over the lot.

Section 55-509.9. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the disclosure packet. The preparer of the disclosure packet shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its

common interest community manager to a request from the settlement agent for written escrow instructions, however a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the disclosure packet with (i) the complete record name of the seller, (ii) the address of the subject lot, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

Section 55-509.10. Exceptions to disclosure requirements.

A. The contract disclosures required by Section 55-509.4 and the association disclosure packet required by Section 55-509.5 shall not be provided in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot by a sale at an auction, where the association disclosure packet was made available as part of an auction package for prospective purchasers prior to the auction sale; or
5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

B. In any transaction in which an association disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the association and provide the packet to the purchaser.

C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet required by Section 55-509.5 need not include the information referenced in subdivisions A 2, A 3, A 5 nor A 9 of Section 55-509.5, and it shall include the information referenced in subdivisions A 17 of Section 55-509.5 only if the association has filed an annual report prior to the date of such disclosure packet.

ARTICLE 3
Operation and Management of Association

Section 55-510. 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 available for examination and copying by a member in good standing or his authorized agent including but not limited to:

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. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;

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 § 55-513;

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 § 55-510.1;

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

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

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

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the member. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

Section 55-510.1. Meetings of the board of directors.

A. All meetings of the board of directors, including any subcommittee or other committee thereof, 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 Section 55-510.

B. Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof 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 which request shall be made at least once a year in writing and include the lot owners' name, address, zip code, and any e-mail 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 e-mail in the case of meetings of the board of directors or (ii) by e-mail 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 members of the association's board of directors or any subcommittee or other committee thereof 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 thereof 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 thereof.

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

If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two members of the board of directors shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any member of the board of directors participating in the meeting who is not physically present.

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

C. The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or 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 thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

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

Section 55-510.2. Distribution of information by members.

The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

Section 55-510.3. Common areas; notice of pesticide application.

The association shall post notice of all pesticide applications in or upon the common areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where the pesticide will be applied at least 48 hours prior to the application.

Sections 55-511 & 55-512. Repealed in 2008.

Section 55-513. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose shall repeal or amend any rule or regulation adopted by the board of directors. Rules and

regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date a lawsuit is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

G. In any suit filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

Section 55-513.1. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005, no association shall prohibit any lot owner from displaying upon property to which the lot owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. The association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the association.

B. The association may restrict the display of such flag in the common areas.

C. In any action brought by the association under Section 55-513 for violation of a flag restriction, the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the association.

D. In any action brought by the association under Section 55-513, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure packet required pursuant to Section 55-509.5.

Section 55-513.2. Home-based businesses permitted; compliance with local ordinances.

Except to the extent the declaration provides otherwise, no association shall prohibit any lot owner from operating a home-based business within his personal residence. The association may, however, establish (i) reasonable restrictions as to the time, place, and manner of the operation of a home-based business and (ii) reasonable restrictions as to the size, place, duration, and manner of the placement or display of any signs on the owner's lot related to such home-based business. Any home-based business shall comply with all applicable local ordinances.

Section 55-513.3. Assessments; late fees.

Except to the extent that the declaration or any rules or regulations promulgated pursuant thereto provides otherwise, the board may impose a late fee for, not to exceed the penalty provided in § 58.1-3915, any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.

Section 55-514. Authority to levy special assessments.

A. In addition to all other assessments which are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by Section 55-516 as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. Notwithstanding the immediately preceding sentence, direct access to the member's lot over any road within the development which is a common area shall not be denied the member.

Section 55-514.1. Reserves for capital components.

A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore capital components and the amount of the expected contribution to the reserve fund for that year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

Section 55-514.2. Deposit of funds; fidelity bond.

A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual association basis.

B. Any association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association, or committed by any managing agent or employees of the managing agent. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$1 million or the amount of the reserve balances of the association plus one-fourth of the aggregate annual assessment income of such association. The minimum coverage amount shall be \$10,000. The board of directors or managing agent may obtain such bond or insurance on behalf of the association.

Section 55-515. Compliance with declaration.

A. Every lot owner, and all those entitled to occupy a lot shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association, or by its board of directors or any managing agent on behalf of such association, or in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section shall not preclude an action against the association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a lot owner for nonpayment of assessments in which the lot owner has failed to pay assessments levied by the association on more than one lot or such lot owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its board of directors or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is

settled prior to judgment. The delinquent owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the association, whether any judicial proceedings are filed.

C. A declaration may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the development is located, or as mutually agreed to by the parties.

Section 55-515.1. Amendment to declaration and bylaws; consent of mortgagee.

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise. If the mortgagee has not supplied an address to the association, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect a lot as collateral or the right of the mortgagee to foreclose on a lot as collateral.

C. Where the declaration is silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the declaration does not specifically affect mortgagee rights.

D. A declaration may be amended by a two-thirds vote of the owners. This subsection may be applied to any association subject to a declaration recorded prior to July 1, 1999, if the declaration is silent on how it may be amended or upon the amendment of that declaration in accordance with its requirements.

E. An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective.

F. Agreement of the required majority of lot owners to any amendment of the declaration shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a

certification, signed by the principal officer of the association or by such other officer or officers as the declaration may specify, that the requisite majority of the lot owners signed the amendment or ratifications thereof.

Section 55-515.2. Validity of declaration; corrective amendments.

A. All provisions of a declaration shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of a declaration shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (Section 36-96.1 et seq.)

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a declaration restraining the alienation of lots other than such lots as may be restricted to residential use only.

E. The rule of property law known as the doctrine of merger shall not apply to any easement included in or granted pursuant to a right reserved in a declaration.

F. The declarant may unilaterally execute and record a corrective amendment or supplement to the declaration to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify any ambiguity in the declaration with respect to an objectively verifiable fact (including without limitation recalculating the liability for assessments or the number of votes in the association appertaining to a lot), within five years after the recordation of the declaration containing or creating such mistake, inconsistency, error or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of the declaration, the principal officer of the association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the board of directors. All corrective amendments and supplements recorded prior to July 1, 1997, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

Section 55-515.2:1. Reformation of declaration; judicial procedure.

A. An association may petition the circuit court in the county or city wherein the development or the greater part thereof is located to reform a declaration where the association, acting through its board of directors, has attempted to amend the declaration regarding ownership of legal title of the common areas or real property using provisions outlined therein to resolve (i) ambiguities or inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an

entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common areas or real property to:

1. Reform, in whole or in part, any provision of a declaration; and
2. Correct mistakes or any other error in the declaration that may exist with respect to the declaration for any other purpose.

C. A petition filed by the association with the court setting forth any inconsistency or error made in the declaration, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided that:

1. The association has made three good faith attempts to convene a duly called meeting of the association to present for consideration amendments to the declaration for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the association;
2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;
3. Where the declarant of the development still owns a lot or other property in the development, the declarant joins in the petition of the association;
4. A copy of the petition is sent to all owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association; and
5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association.

D. Any mortgagee of a lot in the development shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55-515.1.

Section 55-515.3. Use of technology.

A. Unless the declaration expressly provides otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. This section shall govern the use of technology in implementing the provisions of any

declaration or bylaw provision or any provision of this chapter dealing with notices, signatures, votes, consents, or approvals.

B. Electronic transmission and other equivalent methods. The association, lot owners, and those entitled to occupy a lot may perform any obligation or exercise any right under any declaration or bylaw provision or any provision of this chapter by use of any technological means providing sufficient security, reliability, identification, and verifiability. "Acceptable technological means" shall include without limitation electronic transmission over the Internet, or the community or other network, whether by direct connection, intranet, telecopier, or electronic mail.

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

D. Voting rights. Voting, consent to and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic transmission or other equivalent technological means provided that a record is created as evidence thereof and maintained as long as such record would be required to be maintained in nonelectronic form.

E. Acknowledgment not required. Subject to other provisions of law, no action required or permitted by any declaration or bylaw provision or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive organ.

F. Nontechnology alternatives. If any person does not have the capability or desire to conduct business using electronic transmission or other equivalent technological means, the association shall make reasonable accommodation, at its expense, for such person to conduct business with the association without use of such electronic or other means.

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

Section 55-516. Lien for assessments.

A. Once perfected, the association shall have a lien on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under Section 55-58.2 shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file before the expiration of 12 months from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association, or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;
2. A description of the lot;
3. The name or names of the persons constituting the owners of that lot;
4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;
5. The date of issuance of the memorandum;
6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and
7. A statement that the association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (Section 55-508 et seq.) of Title 55.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinafter provided to record and index the same as provided in subsection D, in the names of the persons identified therein as well as in the name of the association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable city or county. The notice shall be sent at least 10 days before the actual filing date of the memorandum of lien.

D. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No suit to enforce any lien perfected under subsection B shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any

such lien in any suit wherein the petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

F. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and reasonable attorneys' fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B hereof, the lien shall be released in accordance with the provisions of Section 55-66.3. Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A (1) of Section 55-66.3. For the purposes of Section 55-66.3, the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A hereof creates a lien, maintainable pursuant to Section 55-515.

I. At any time after perfecting the lien pursuant to this section, the property owners' association may sell the lot at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the lot and shall be deemed the lot owner's statutory agent for the purpose of transferring title to the lot. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The association shall give notice to the lot owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the lot owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the lot. The notice shall further inform the lot owner of the right to bring a court action in the circuit court of the county or city where the lot is located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

2. After expiration of the 60-day notice period specified in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which such development is situated. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection D, in the names of the persons identified therein as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the lot owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the lot owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the lot. Those conditions are that the lot owner: (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pays all

expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorneys' fees.

4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date and place of any proposed sale in execution of the lien, and including the name, address and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement which is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. In the event of a sale, the association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the declaration, the association may bid to purchase the lot at a foreclosure sale. The association may own, lease, encumber, exchange, sell or convey the lot. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 of this section and Section 26-15. The written bid submitted pursuant to this subsection may be prepared by the association, its agent or attorney.

b. The association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.

c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including attorneys' fees; second, to the satisfaction of all taxes, levies and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the lot with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale thereof or to deliver possession of the lot to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 26-15 and every account of a sale shall be recorded pursuant to Section 26-16. In addition, the accounting shall be made available for inspection and copying pursuant to Section 55-510 upon the written request of the prior lot owner, current lot owner or any holder of a recorded lien against the lot at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a lot is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

Section 55-516.1. Annual report by association.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The annual report shall be accompanied by a fixed fee in an amount established by the Board.

B. The Common Interest Community Board may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the Common Interest Community Board.

C. The association shall also remit to the agency an annual payment as follows:

1. The lesser of:

a. \$1,000 or such other amount as established by agency regulation; or

b. Five hundredths of one percent (0.05%) of the association's gross assessment income during the preceding year.

2. For the purposes of subdivision 1 b, no minimum payment shall be less than \$10.00.

D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to Section 55-529.

Section 55-516.2. Condemnation of common area; procedure.

When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment therefor shall be paid to the association, which shall be a party in interest in the condemnation proceeding.

Except to the extent the declaration or any rules and regulations duly adopted pursuant thereto otherwise provide, the board of directors shall have the authority to negotiate with the condemning authority, agree to an award or payment amount with the condemning authority without instituting condemnation proceedings and, upon such agreement, convey the subject common area to the condemning authority. Thereafter, the president of the association may unilaterally execute and record the deed of conveyance of the condemning authority. A member of the association, by virtue of his membership, shall be estopped from contesting the action of the association in any proceeding held pursuant to this section.

**COMMON INTEREST COMMUNITY BOARD
POWERS AND LICENSING REQUIREMENTS
(Common Interest Communities)**

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Section 54.1-2345. Definitions.

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

“Association” means the same as that term is defined in Section 55-528.

“Board” means the Common Interest Community Board.

“Common interest community” means the same as that term is defined in Section 55-528; provided that for the purposes of this chapter only, a common interest community shall not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (Section 55-360 et seq.) or any additional land that is a part of such registration.

“Common interest community manager” means a person or business entity, including but not limited to a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.

“Declaration” means the same as that term is defined in Section 55-528.

“Governing board” means the governing board of an association, including the executive organ of a condominium unit owners’ association, the executive board of a cooperative proprietary lessees’ association, and the board of directors or other governing body of a property owners’ association.

“Lot” means the same as that term is defined in Section 55-528.

“Management services” means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

Section 54.1-2346. License required; certification of employees; renewal; provisional license.

A. Unless exempted by Section 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this chapter prior to engaging in such management services.

B. Unless exempted by Section 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this chapter, shall be subject to the provisions of Section 54.1-111.

C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest

community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be \$10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

F. The Board shall issue a provisional license to any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009. Such provisional license shall expire on June 30, 2012, and shall not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.

Section 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this chapter shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;

2. An employee of an association from providing management services for that association's common interest community;

3. A resident of a common interest community acting without compensation from providing management services for that common interest community;

4. A resident of a common interest community from providing bookkeeping, billing, or recordkeeping services for that common interest community for compensation, provided the blanket fidelity bond or employee dishonesty insurance policy maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;

5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;

6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;

7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (Section 55-360 et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

Section 54.1-2348. Common Interest Community Board; membership; meetings; quorum.

There is hereby created the Common Interest Community Board (the Board) as a policy board, within the meaning of Section 2.2-2100, in the executive branch of state government. Members of the Board shall be appointed by the Governor and consist of eleven members as follows: three shall be representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, two shall be representatives of developers of Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an association that is not professionally managed at the time of appointment and two of whom reside in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of two years and one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of three years; the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association shall serve a term

of two years, and the two Virginia citizens who reside in a common interest community shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.

The Board shall meet at least once each year and at other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

Section 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of Sections 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (Section 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) \$1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding year. For the purposes of clause (ii), no minimum payment shall be less than \$10. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to Section 55-529;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation

as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to Section 55-529;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter; and

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.

B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this chapter, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (Section 54.1-2100 et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this chapter or Chapter 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to Section 2.2-4019 of the Administrative Process Act (Section 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any

other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

Section 54.1-2350. Annual report and disclosure packets.

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

1. Administer the provisions of Chapter 29 (Section 55-528 et seq.) of Title 55;
2. Develop and disseminate an association annual report form for use in accordance with Sections 55-79.93:1, 55-504.1, and 55-516.1; and
3. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to Section 55-509.5, which form shall summarize the unique characteristics of property owners' associations generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including but not limited to the obligation of a lot owner to pay regular annual or special assessments to the association, the penalty for failure or refusal to pay such assessments, the purposes for which such assessments may be used, and the importance the declaration of restrictive covenants and other governing documents play in association living.

Section 54.1-2351. General powers and duties of Board concerning associations.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter, Chapter 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action or suit involving a violation by a declarant or a developer of a time-share project of this chapter, Chapter 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this chapter, the Board, without compliance with the Administrative Process Act (Section 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this chapter, Chapter 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than \$1,000 per violation against any governing board that violates any provision of this chapter, Chapter 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this chapter, Chapter 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (Section 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

Section 54.1-2352. Cease and desist orders.

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter, if the Board determines after notice and hearing that the governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this chapter, including engaging in any act or practice in violation of this chapter, Chapter 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, or any of the Board's regulations or orders;

2. Failed to register as an association or to file an annual report as required by statute or regulation;

3. Materially misrepresented facts in an application for registration or an annual report; or

4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Board shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

Section 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable

cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager; and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject

common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant to Section 55-530.1, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of Section 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (Section 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions

of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of Sections 13.1-723 and 13.1-724 shall be required, nor shall Sections 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

Section 54.1-2354. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this chapter and the provisions of Chapters 4.2 (Section 55-79.39 et seq.), 21 (Section 55-360 et seq.), 24 (Section 55-424 et seq.), or 26 (Section 55-508 et seq.) of Title 55, as applicable.

COMMON INTEREST COMMUNITY OMBUDSMAN, OWNER COMPLAINTS & RECOVERY FUND

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Section 55-528. Definitions.

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

“Association” includes condominium, cooperative, or property owners’ associations.

“Balance of the fund” means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions (1), (2), and (4) of Section 26-40, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

“Board” means the Common Interest Community Board.

“Claimant” means upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to Section 54.1-2353 in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

“Common interest community” means real estate located within the Commonwealth subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an association and is obligated to pay assessments provided for in 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 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 as a regular annual assessment in connection with the provision of maintenance or services or both 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.

“Director” means the Director of the Department of Professional and Occupational Regulation.

“Governing board” means the governing board of an association, including the executive organ of a condominium unit owners’ association, the executive board of a cooperative proprietary lessees’ association, and the board of directors of a property owners’ association.

“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.

Section 55-529. Common Interest Community Management Information Fund.

There is hereby created the Common Interest Community Management Information Fund to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. The Fund shall consist of money paid into it pursuant to Sections 54.1-2349, 55-79.93:1, 55-504.1, and 55-516.1. The Fund shall be established on the books of the Comptroller, and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to Section 55-530.1. Interest earned on the Fund shall be credited to the Fund.

Section 55-530. Powers of the Board; Common interest community ombudsman; final adverse decisions.

A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by Section 54.1-2349 and this chapter.

B. The Director in accordance with Section 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman. The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in the performance of its duties under this chapter. The expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall be paid first from interest earned on deposits constituting the fund and the balance from the moneys collected annually in the fund.

C. The Office of the Common Interest Community Ombudsman shall:

1. Assist members in understanding their rights and the processes available to them according to the laws and regulations governing common interest communities;

2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in person;
3. Provide to members and other citizens information concerning common interest communities upon request;
4. Make available, either separately or through an existing Internet website utilized by the Director, information as set forth in subdivision 3 and such additional information as may be deemed appropriate;
5. Receive the notices of final adverse decisions;
6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on inquiries received, the types of assistance requested, notices of final adverse decisions received, any actions taken, and the disposition of each such matter;
7. Upon request, assist members in understanding the rights and processes available under the laws or regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;
8. Ensure that members have access to the services provided through the Office of the Common Interest Community Ombudsman and that the members receive timely responses from the representatives of the Office of the Common Interest Community Ombudsman to the inquiries;
9. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;
10. Monitor changes in federal and state laws relating to common interest communities;
11. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year, and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and
12. Carry out activities as the Board determines to be appropriate.

D. The Board may use the remainder of the interest earned on the balance of the fund and of the moneys collected annually and deposited in the fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;
2. Expeditious and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;
3. Seminars and educational programs designed to address topics of concern to community associations; and
4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

E. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include but not be limited to the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.
2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mail address of the Office of the Common Interest Community Ombudsman. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

F. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund, Section 55-530.1. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

G. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request.

If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

H. The Board shall issue a certificate of filing to each association which has properly filed in accordance with this title. The certificate shall include the date of registration and a unique registration number assigned by the Board.

I. The Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (Section 2.2-4000 et seq.) to accomplish the purpose of this chapter.

Section 55-530.1. Common Interest Community Management Recovery Fund.

A. There is hereby created the Common Interest Community Management Recovery Fund (the Fund) to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date hereof shall be assessed \$25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (Section 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of Section 26-40.01.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest Community Management Information Fund or accrue to the Fund.

C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000. Whenever the Director determines that the principal balance of the Fund is or will be less than

such minimum principal balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to bring the principal balance of the Fund to the amount required by this subsection. Such transfer shall be considered by the Board within 30 days of the notification of the Director.

D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the minimum amount required by this section, or if a transfer to the fund has not occurred, the Board shall assess each association and each common interest community manager within 30 days of notification by the Director, a sum sufficient to bring the principal balance of the Fund to the required minimum amount. The amount of such assessment shall be allocated among the associations and common interest community managers in proportion to the each payor's most recently paid annual assessment, or if an association or common interest community manager has not paid an annual assessment previously, in proportion to the average annual assessment most recently paid by associations or common interest community managers respectively. The Board may order an assessment at any time in addition to any required assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

E. If any common interest community manager fails to remit the required payment within 45 days of the mailing, the Director shall notify the common interest community manager by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall notify the association by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing and willful violation of this section by the governing board of the association.

G. At the close of each fiscal year, whenever the balance of the fund exceeds \$5 million, the amount in excess of \$5 million shall be transferred to the Virginia Housing Partnership Revolving Fund, Section 36-137. Except for payments of costs as set forth in this chapter and transfers pursuant to this subsection, there shall be no transfers out of the fund, including transfers to the general fund, regardless of the balance of the fund.

H. A claimant may seek recovery from the fund subject to the following conditions:

1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of Section 54.1-2353 by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

3. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment of the amount of such shortfall to the claimant from the fund; provided that in no event shall such payment exceed the balance in the fund. When the fund balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct payment shall be applied first in satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager. If the Board has reason to believe that there may be additional claims against the fund, the Board may withhold any payment(s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims received exceeds the fund balance, the fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the fund in proportion to the amounts of claims remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the fund against the common interest community manager to the extent that such rights were satisfied from the fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in Section 2.2-4001, and judicial review of these findings shall be in accordance with Section 2.2-4025 of the Administrative Process Act (Section 2.2-4000 et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment from the fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

COVENANTS RESTRICTING SOLAR ENERGY COLLECTION DEVICES

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Section 67-700. Definitions.

As used in this chapter:

“Community association” means an unincorporated association or corporation that owns or has under its care, custody, or control real estate subject to a recorded declaration of covenants that obligates a person, by virtue of ownership of specific real estate, to be a member of the unincorporated association or corporation.

“Solar energy collection device” means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

Section 67-701. Covenants regarding solar power.

A. No community association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for that community association establishes such a prohibition. However a community association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55-79.97 and any disclosure packet pursuant to § 55-509.5, as applicable, given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

B. The community association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the community association. A community association may establish reasonable restrictions as to the size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

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TITLE 13.1 – CORPORATIONS

CHAPTER 10

NONSTOCK CORPORATION ACT

(Selected Provisions)

(Usage Note: This Act applies specifically to all community associations that are incorporated under Virginia law and its provisions may serve as reasonable guidelines for unincorporated associations to follow. Note that Section 13.1-870.2 applies specifically to unincorporated associations.)

Section 13.1-803. Definitions.

As used in this Act:

...

“Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with Section 13.1-810, by electronic transmission.

“Disinterested director” means a director who, at the time action is to be taken under Section 13.1-871, 13.1-878, or 13.1-880, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment, or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under Section 13.1-878 or 13.1-880, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (a) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter or (b) service as a director of another corporation of which an interested person is also a director.

“Document” means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

...

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic record” means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of Section 13.1-810.

“Electronic transmission” or “electronically transmitted” means any form or process of communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of Section 13.1-810.

...

“Employee” includes, unless otherwise provided in the bylaws, an officer but not a director. A director may accept duties that make him also an employee.

...

“Person” includes an individual and an entity.

“Principal office” means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to Section 13.1-936 shall be conclusive for purposes of this Act.

...

“Record date” means the date established under Article 7 (Section 13.1-837 et seq.) of this Act on which a corporation determines the identity of its members and their membership interests for purposes of this Act. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

...

“Sign” or “signature” means, with present intent to authenticate or adopt a document: (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

...

“Voting power” means the current power to vote in the election of directors.

“Writing” or “written” means any information in the form of a document.

Section 13.1-810. Notices and other communications.

For purposes of this chapter, except for notice to or from the Commission:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

B. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication shall be in the English language. A notice or other communication may be given or sent by any method of delivery except that an electronic transmission shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by publication in a newspaper of general circulation in the area where the notice is intended to be given, or by radio, television, or other form of public communication in the area where notice is intended to be given.

C. Notice or other communication to a domestic or foreign corporation, authorized to transact business in the Commonwealth, may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

D. Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection K.

E. Any consent under subsection D may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or other person responsible for the giving of notice or other communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

F. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

1. It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

2. It is in a form capable of being processed by that system.

G. Receipt of an electronic acknowledgment from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.

H. An electronic transmission is received under this section even if no individual is aware of its receipt.

I. Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

1. If in physical form, the earliest of when it is actually received or when it is left at:
 - a. A member's address shown on the corporation's record of members maintained by the corporation pursuant to subsection C of Section 13.1-932;
 - b. A director's residence or usual place of business;
 - c. The corporation's principal place of business; or
 - d. The corporation's registered office when left with the corporation's registered agent;
2. If mailed postage prepaid and correctly addressed to a member, upon deposit in the United States mail;
3. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a member, the earliest of when it is actually received or: (i) if sent by registered or certified mail return receipt requested, the date shown on the receipt, signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;
4. If an electronic transmission, when it is received as provided in subsection F; and
5. If oral, when communicated.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

K. If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

Section 13.1-814.1 Special provisions for community associations.

A. As used in this section, “community association” shall mean a corporation incorporated under this chapter or under former Chapter 2 of this title which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the corporation.

B. Notwithstanding the requirements of Sections 13.1-851, 13.1-852, 13.1-855, 13.1-856, 13.1-857, 13.1-858 and 13.1-862, the provisions set forth in those sections need not be set forth in the articles of incorporation of a community association and shall be effective if set forth in the bylaws.

C. Notwithstanding the provisions of Sections 13.1-855, 13.1-856, 13.1-892 and 13.1-899, the provisions of the bylaws of any community association in existence on or before January 1, 1986, shall continue to govern (i) the procedures for and election of members of the board of directors, (ii) the amendment of the bylaws, (iii) the sale, release, exchange or disposition of all or substantially all of the corporation’s property, whether or not in the usual and regular course of business, and (iv) the corporation’s ability to mortgage, pledge, or dedicate to repayment of indebtedness, or otherwise encumber its property; provided, that the community association may, in accordance with its current articles of incorporation and bylaws, vote to amend its corporate documents to become subject to Sections 13.1-855, 13.1-856, 13.1-892 and 13.1-899.

Section 13.1-823. Bylaws.

A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

Section 13.1-826. General powers.

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend, in its corporate name;
2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
4. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
5. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal with shares or other interests in, or obligations of, any other entity;
6. To make contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and other obligations, which may be convertible into, or include the option to purchase, other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
7. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
8. To transact its business, locate offices, and exercise the powers granted by this Act within or without the Commonwealth;
9. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
10. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth, for managing the business and regulating the affairs of the corporation;
11. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes;
12. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;
13. To insure for its benefit the life of any of its directors, officers, or employees and to continue such insurance after the relationship terminates;
14. To make payments or donations or do any other act not inconsistent with this section or any other applicable law that furthers the business and affairs of the corporation;
15. To pay compensation or to pay additional compensation to any or all directors, officers, and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a banking corporation, an insurance corporation, a savings institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings institutions, credit unions, industrial loan associations or other special types of corporations shall not be deemed repealed or amended by any provision of this Act except where specifically so provided.

D. [Not included. See actual statute].

Section 13.1-833. Registered office and registered agent.

A. Each corporation shall continuously maintain in the Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of the Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Section 13.1-837. Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class

shall be set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws. A corporation may issue certificates evidencing membership interests therein. Membership interests shall not be transferable. Members shall not have voting or other rights except as provided in the articles of incorporation or if the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by amendment of the articles of incorporation.

Section 13.1-838. Annual meeting.

A. A corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the bylaws.

B. Annual meetings of members may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Section 13.1-839. Special meeting.

A. A corporation shall hold a special meeting of members:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the absence of a provision in the articles of incorporation or bylaws stating who may call a special meeting of members, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under Sections 13.1-840 or 13.1-844, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

D. Special members' meetings may be held at such place in or out of the Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of Section 13.1-842 may be conducted at a special members' meeting.

Section 13.1-841. Corporate action without meeting.

A.1. Corporate action required or permitted by this Act to be taken at a meeting of the members may be taken without a meeting and without prior notice if the corporate action is taken by all members entitled to vote on the corporate action, in which case no corporate action by the board of directors shall be required.

2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of a corporation, corporate action required or permitted by this Act to be taken at a meeting of members may be taken without a meeting and without prior notice, if the corporate action is taken by members who would be entitled to vote at a meeting of members having voting power to cast not fewer than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary to authorize or take the corporate action at a meeting at which all members entitled to vote thereon were present and voted.

3. The corporate action shall be evidenced by one or more written consents bearing the date of execution and describing the corporate action taken, signed by the members entitled to take such corporate action without a meeting and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any corporate action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. Corporate action taken under this section is effective as of the date specified therein, provided the consent states the date of execution by each member.

B. If not otherwise determined under Section 13.1-840 or 13.1-844, the record date for determining members entitled to take corporate action without a meeting is the date the first member signs the consent under subsection A. No written consent shall be effective to take the corporate action referred to therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to the corporation in the manner required by this section, written consents sufficient in number to take corporate action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

C. For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in Section 13.1-803. A consent signed under this section has the effect of a vote of voting members at a meeting and may be described as such in any document filed with the Commission under this Act.

D. If corporate action is to be taken under this section by fewer than all of the members entitled to vote on the action, the corporation shall give written notice of the proposed corporate action, not less than five days before the action is taken, to all persons who are members on the record date and who are entitled to vote on the matter. The notice shall contain or be accompanied by the same material that under this Act would have been required to be sent

to members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

E. If this Act requires that notice of proposed corporate action be given to nonvoting members and the corporate action is to be taken by consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action not less than five days before it is taken. The notice shall contain or be accompanied by the same material that under this Act would have been required to be sent to nonvoting members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

Section 13.1-842. Notice of meeting.

A. 1. A corporation shall notify members of the date, time and place of each annual and special members' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, domestication, a proposed sale of assets pursuant to Section 13.1-900, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. Unless this Act or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

2. In lieu of delivering notice as specified in subdivision A 1, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than 60 days, and the second not less than seven days before the date of the meeting.

B. Unless this Act or the articles of incorporation require otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under Section 13.1-840 or 13.1-844, the record date for determining members entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to members.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under Section 13.1-844, however, notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

Section 13.1-843. Waiver of notice of meetings.

A. A member may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Section 13.1-844. Record date.

A. The bylaws may fix or provide the manner of fixing in advance the record date for one or more voting groups in order to make a determination of members for any purpose. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix as the record date the date on which it takes such action or a future date.

B. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members.

C. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Section 13.1-844.1. Conduct of the meeting.

A. At each meeting of members, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws, or, in the absence of such a provision, by the board of directors.

B. Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

C. The chairman of the meeting shall announce at the meeting when the polls will open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and to close upon the final adjournment of the meeting.

Section 13.1-844.2. Remote participation in annual and special meetings.

A. Members may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a member; and
2. Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

Section 13.1-845. Members' list for meeting.

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of a members' meeting. If the board of directors fixes a different record date to determine the members entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its members who are entitled to vote at the meeting. A list shall be arranged by voting group, and show the address of each member.

B. The members' list for notice shall be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A members' list for voting shall be similarly available for inspection promptly after the record date for voting. A member, or the member's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection C of Section 13.1-933, to copy a list, during the regular business hours and at the member's expense, during the period it is available for inspection.

C. The corporation shall make the list of members entitled to vote available at the meeting, and any member, or the member's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

D. If the corporation refuses to allow a member, the member's agent, or the member's attorney to inspect a members' list before or at the meeting, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a members' list does not affect the validity of action taken at the meeting.

Section 13.1-846. Voting entitlement of members.

A. Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation or if the articles of incorporation so provide, in the bylaws.

B. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

C. Unless the articles of incorporation provide otherwise, in the election of directors every member, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the member has a right to vote.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

Section 13.1-847. Proxies.

A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy.

B. A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended it credit under terms requiring the appointment;
2. An employee of the corporation whose employment contract requires the appointment; or
3. A party to a voting agreement created under Section 13.1-852.2.

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. Subject to Section 13.1-848 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

H. Any fiduciary who is entitled to vote any membership interest may vote such membership interest by proxy.

Section 13.1-847.1. Voting procedures and inspectors of elections.

A. A corporation may appoint one or more inspectors to act at a meeting of members and make a written report of the inspector's determinations. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of members, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii) determine the number of the members represented at a meeting and the validity of proxies and ballots, (iii) count all votes, (iv) determine, and retain for a reasonable period a record of the disposition of, any challenges made to any determination by the inspectors, and (v) certify their determination of the number of members represented at the meeting and their count of all votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

C. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in the Commonwealth, where its registered office is located, upon application by a member, shall determine otherwise.

D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection B of Section 13.1-847, ballots, and the regular books and records of the corporation. If the inspectors consider other reliable information for the limited purpose permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v) of subsection B, the precise information that they considered, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate and reliable.

E. If authorized by the board of directors, any member vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the member or the member's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the member or the member's proxy.

Section 13.1-848. Corporation's acceptance of votes.

A. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is an entity and the name signed purports to be that of an officer, partner or agent of the entity;

2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the membership interest in an order of the court by which such person was appointed has been presented with respect to the vote, consent, waiver, or proxy appointment;

4. The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

5. Two or more persons are the member as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of membership interests in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

E. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of Section 13.1-847 are not liable in damages to the member for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Section 13.1-849. Quorum and voting requirements for voting groups of members.

A. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Act or the articles of incorporation. Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

B. Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

- C. Less than a quorum may adjourn a meeting.
- D. The election of directors is governed by Section 13.1-852.

Section 13.1-852. Voting for directors; cumulative voting.

A. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

B. Members do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that “all of a designated voting group of members are entitled to cumulate their votes for directors” or words of similar import means that the members designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

2. A member who has the right to cumulate his votes gives notice to the secretary of the corporation not less than 48 hours before the time set for the meeting of the member’s intent to cumulate his votes during the meeting. If one member gives such a notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

Section 13.1-853. Requirement for and duties of board of directors.

A. Except as provided in an agreement authorized by Section 13.1-852.1, each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized by Section 13.1-852.1.

Section 13.1-854. Qualification of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. Unless the articles of incorporation or bylaws so prescribe, a director need not be a resident of the Commonwealth or a member of the corporation.

Section 13.1-855. Number and election of directors.

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The members may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members or the board of directors. However, to the extent that the corporation has members with voting privileges, only the members may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If the corporation has members with voting privileges, directors shall be elected at the first annual members' meeting and at each annual meeting thereafter unless their terms are staggered under Section 13.1-858.

E. No individual shall be named or elected as a director without his prior consent.

Section 13.1-857. Terms of directors generally.

A. In the absence of a provision in the articles of incorporation fixing a term of office, the term of office for a director shall be one year.

B. The terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected, or if there are no members or the corporation's members do not have voting rights, at the end of such other period as may be specified in the articles of incorporation.

C. The terms of all other directors expire at the next annual meeting of members following the directors' election unless their terms are staggered under § 13.1-858 or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

D. A decrease in the number of directors does not shorten an incumbent director's term.

E. The term of a director elected by the board of directors to fill a vacancy expires at the next members' meeting at which directors are elected or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

F. Except in the case of ex-officio directors, despite the expiration of a director's term, a director continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors, if any.

Section 13.1-858. Staggered terms of directors.

A. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into groups, and the terms of office of the several groups need not be uniform.

B. If the articles of incorporation permit cumulative voting, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual member's meeting.

Section 13.1-859. Resignation of directors.

A. A director may resign at any time by delivering written notice to the board of directors, its chairman, the president, or the secretary.

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the board of directors may fill the pending vacancy before the effective time if the board of directors provides that the successor does not take office until the effective time.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, the corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office, if any.

Section 13.1-860. Removal of directors.

A. The members may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only with cause.

B. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If

cumulative voting is not authorized, unless the articles of incorporation require a greater vote, a director may be removed if the number of votes cast to remove him constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. If a corporation has no members or no members with voting rights, a director may be removed pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a director may be removed by such vote as would suffice for his election.

E. A director may be removed only at a meeting called for the purpose of removing him. The meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

F. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office, if any.

Section 13.1-862. Vacancy on board of directors.

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

1. The members may fill the vacancy;
2. The board of directors may fill the vacancy; or
3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of members, only the members of that voting group are entitled to vote to fill the vacancy if it is filled by the members.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of Section 13.1-859 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy.

Section 13.1-863. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Section 13.1-864. Meetings of board of directors.

A. The board of directors may hold regular or special meetings in or out of the Commonwealth.

B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 13.1-865. Action without meeting of board of directors.

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this Act to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

B. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

D. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

E. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Section 13.1-866. Notice of board of directors' meetings.

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Section 13.1-867. Waiver of notice by director.

A. A director may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 13.1-868. Quorum and voting by directors.

A. Unless the articles of incorporation or bylaws require a greater or lesser number for the transaction of all business or any particular business, or unless otherwise specifically provided in this Act, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or

2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection A.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

1. The director objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or

2. He votes against, or abstains from, the action taken.

E. Except as provided in Section 13.1-852.1, a director shall not vote by proxy.

F. Whenever this Act requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of members.

Section 13.1-869. Committees.

A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of directors to it shall be approved by the greater number of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under Section 13.1-868.

C. Sections 13.1-864 through 13.1-868, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 13.1-853, except that a committee may not:

1. Approve or recommend to members action that this Act requires to be approved by members;
2. Fill vacancies on the board or on any of its committees;
3. Amend the articles of incorporation pursuant to Section 13.1-885;
4. Adopt, amend, or repeal the bylaws; or
5. Approve a plan of merger not requiring member approval.

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 13.1-870.

F. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws, or the resolution creating the committee provides otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.

Section 13.1-870. General standards of conduct for directors.

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

B. Unless a director has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the board of directors of which the director is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

Section 13.1-870.1. Limitation on liability of officers and directors; exception.

A. In any proceeding brought by or in the right of a corporation or brought by or on behalf of members of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence, or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) \$100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed.

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under Section 501 (c) of the Internal Revenue Code for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation

without compensation for his services shall not be liable for damages in any such proceeding. The immunity provided by this subsection shall survive any termination, cancellation, or other discontinuance of the corporation.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E. 1. Notwithstanding the provisions of this section, in any proceeding against an officer or director who receives compensation from a community association for his services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

2. The liability of an officer or director shall not be limited as provided in this subsection if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

3. As used in this subsection, “community association” shall mean a corporation incorporated under this Act that owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the incorporated association.

4. The immunity provided by this subsection shall survive any termination, cancellation, or other discontinuance of the community association.

Section 13.1-870.2. Limitation on liability of officers and directors; additional exception.

A. As used in this section, “community association” shall mean an unincorporated association or corporation which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the unincorporated association or corporation.

B. In any proceeding against an officer or director who receives compensation from a community association for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves

such an association without compensation for his services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. The immunity provided by this section shall survive any termination, cancellation, or other discontinuance of the community association.

Section 13.1-871. Director conflicts of interests.

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes him from being a disinterested director. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;
2. The material facts of the transaction and the director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or
3. The transaction was fair to the corporation.

B. For purposes of subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee. A transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director who is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

C. For purposes of subdivision A 2, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. The votes controlled by a director who is not disinterested may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The director's votes, however, may be counted in determining whether the transaction is approved under other sections of this Act. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Section 13.1-872. Required officers.

A. Except as provided in an agreement authorized by Section 13.1-852.1, a corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of Section 13.1-804.

B. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have responsibility for preparing and maintaining custody of minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in the corporation.

Section 13.1-873. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Section 13.1-874. Resignation and removal of officers.

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the corporation may fill the pending vacancy before the effective time if the successor does not take office until the effective time.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation. An officer's removal does not affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office, if any.

Section 13.1-876. Authority to indemnify.

A. Except as provided in subsection D, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the director:

1. Conducted himself in good faith;
2. Believed:
 - a. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - b. In all other cases, that his conduct was at least not opposed to its best interests; and
3. In the case of any criminal proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subdivision A 2 b.

C. The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself determinative that the director did not meet the relevant standard of conduct described in this section.

D. Unless ordered by a court under subsection C of Section 13.1-79.1, a corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard under subsection A; or
2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Section 13.1-877. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Section 13.1-880. Determination and authorization of indemnification.

A. A corporation may not indemnify a director under Section 13.1-876 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible because he has met the relevant standard of conduct set forth in Section 13.1-876.

B. The determination shall be made:

1. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

2. By special legal counsel:

a. Selected in the manner prescribed in subdivision 1 of this subsection; or

b. If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

3. By the members, but membership interests under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

C. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision 2 to select counsel.

Section 13.1-881. Indemnification of officers.

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation is entitled to mandatory indemnification under Section 13.1-877, and is entitled to apply for court-ordered indemnification under Section 13.1-879.1, in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer of the corporation to the same extent as to a director.

Section 13.1-884. Authority to amend articles of incorporation.

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not

required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, purpose, or duration of the corporation.

Section 13.1-885. Amendment of articles of incorporation by directors.

A. Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of at least two-thirds of the directors in office. The board may adopt one or more amendments at any one meeting.

B. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

1. To delete the names and addresses of the initial directors;
2. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Commission;
3. To add, delete, or change a geographic attribution for the name; or
4. To make any other change expressly permitted by this Act to be made without member action.

Section 13.1-886. Amendment of articles of incorporation by directors and members.

A. Where there are members having voting rights, except where member approval of an amendment of the articles of incorporation is not required by this Act, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment shall be adopted by the board of directors;
2. After adopting the proposed amendment, the board of directors shall submit the amendment to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination; and
3. The members entitled to vote on the amendment shall approve the amendment as provided in subsection D.

B. The board of directors may condition its submission of the proposed amendment on any basis.

C. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with Section 13.1-842. The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

D. Unless this Act or the board of directors, acting pursuant to subsection B, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the amendment by more than two-thirds of all the votes cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a quorum of the voting group exists.

Section 13.1-892. Amendment of bylaws by board of directors or members.

A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or Section 13.1-893 reserves that power exclusively to the members; or
2. The members in repealing, adopting, or amending a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

Section 13.1-893. Bylaw provisions increasing quorum or voting requirements for directors.

A. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the members, only by the members, unless the bylaws otherwise provide; or
2. If adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it shall be amended or repealed only by a specified vote of either the members or the board of directors.

C. Action by the board of directors under subsection A to amend or repeal a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors

shall be effective only if it meets the quorum requirement and is adopted by the vote required to take action under the quorum and voting requirement then in effect.

Section 13.1-914. Automatic termination of corporate existence.

A. If any domestic corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending termination of its corporate existence. Whether or not such notice is mailed, if any corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, the corporate existence of the corporation shall be automatically terminated as of that day.

B. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to Section 13.1-835 fails to file a statement of change pursuant to Section 13.1-834 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of the impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day.

C. The properties and affairs of a corporation whose corporate existence has been terminated pursuant to this section shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) pay, satisfy, and discharge its liabilities and obligations, and (iii) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with Section 13.1-907.

D. No officer, director, or agent of a corporation shall have any personal obligation for any of the liabilities of the corporation whether such liabilities arise in contract, tort, or otherwise, solely by reason of the termination of the corporation's existence pursuant to this section.

Section 13.1-916. Reinstatement of corporation that has ceased to exist.

A corporation that has ceased to exist may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to Section 13.1-911 and the circuit court's decree directing dissolution contains no provision of reinstatement of corporate existence. The Commission shall enter an order reinstating the corporate existence upon receiving an annual report together with payment of a reinstatement fee of \$10 plus all registration fees and penalties that were due before the corporation ceased to exist and that would have become due thereafter if the corporation had not ceased to exist. An annual report need not be submitted if

such a report previously was filed during the calendar year in which reinstatement is sought. The application for reinstatement may be by letter signed by an officer or director of the corporation or may be by affidavit signed by any member stating that after diligent search by such member no officer or director could be found. The Commission shall assess the amounts that would have become due. Upon the entry by the Commission of an order of reinstatement, the corporate existence shall be deemed to have continued from the date of termination of corporate existence, and any liability incurred by the corporation or a director, officer, or other agent after termination of corporate existence and before the reinstatement shall be determined as if the termination of corporate existence had never occurred. If the name of a corporation that has ceased to exist is not distinguishable upon the records of the Commission, the reinstated corporation shall not engage in business until it has amended its articles of incorporation to change its name to a name that is distinguishable upon the records of the Commission.

Section 13.1-932. Corporate records.

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, if any.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to members referred to in subdivision L 5 of Section 13.1-804 regarding facts on which a filed document is dependent;

2. Its bylaws or restated bylaws and all amendments to them currently in effect;

3. Resolutions adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;

4. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

5. All written communications to members generally within the past three years;

6. A list of the names and business addresses of its current directors and officers;
and
7. Its most recent annual report delivered to the Commission under Section 13.1-936.

Section 13.1-933. Inspection of records by members.

A. Subject to subsection C of Section 13.1-934, a member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of Section 13.1-932 if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

B. A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection C and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection A;

2. Accounting records of the corporation; and

3. The record of members.

C. A member may inspect and copy the records identified in subsection B only if:

1. He has been a member of record for at least six months immediately preceding his demand;

2. His demand is made in good faith and for a proper purpose;

3. He describes with reasonable particularity his purpose and the records that he desires to inspect; and

4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or

2. The power of a court, independently of this Act, to compel the production of corporate records for examination.

Section 13.1-934. Scope of inspection right.

A. A member's agent or attorney has the same inspection and copying rights as the member he represents.

B. The right to copy records under Section 13.1-933 includes, if reasonable, the right to receive copies xerographic or other means, including copies through an electronic transmission if available and so requested by the member.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction, and transmission of the records.

D. The corporation may comply with a member's demand to inspect the record of members under subdivision B 3 of Section 13.1-933 by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

Section 13.1-935. Court-ordered inspection.

A. If a corporation does not allow a member who complies with subsection A of Section 13.1-933 to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections B and C of Section 13.1-933 may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order if the member proves that the corporation refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Section 13.1-936. Annual report of domestic and foreign corporations.

A. Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall file, within the time prescribed by this section, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated;

2. The address of the registered office of the corporation in the Commonwealth, including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its registered agent in the Commonwealth at such address; and

3. The names and post office addresses of the directors and the principal officers of the corporation.

B. The report shall be made on forms prescribed and furnished by the Commission, and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and on or before such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

NOTES ON 2014 AMENDMENTS

These amendments are effective as of July 1, 2014 (unless otherwise stated below). Prior to July 1, 2014, our 2013 edition of the Virginia Statutes reference book should be consulted. The full text of amendments and the Code of Virginia, including all provisions of the Nonstock Act (Title 13.1, Chapter 10) can be found at <http://legis.state.va.us>. The following notes are summaries of the main revisions to the statutes included in this reference book and are not intended to constitute legal advice.

Effective July 1, 2014, a copy of our 2014 edition of the Virginia Statutes reference book can also be found on our website at www.chadwickwashington.com.

Amendments to the Condominium Act

1. **Section 55-79.53. Compliance with condominium instruments.** Confirms that this provision does not preclude (or prevent) lawsuits against associations, and that the prevailing party in lawsuits can recover reasonable attorneys' fees, costs and interest on the judgment.
2. **New Section 55-79.71:2. Merger or consolidation of condominiums; procedure.** Any two or more condominiums may merge into one condominium association, upon requisite vote of the owners (same vote as required to terminate the condominium), and if required by condominium instruments, approval of mortgagees.
3. **New Section 55-79.73:2. Reformation of declaration; judicial procedure.** Provides a procedure for associations to seek relief from courts to reform (i.e., fix) condominium instruments if the association has attempted three times, without success, to amend the condominium instruments regarding ownership of legal title of the common elements or real property.
4. **Section 55-79.74:1. Books, minutes and records; inspection.** *For self-managed associations*, increases from five (5) calendar days to ten (10) business days the timeframe to provide access to association books and records once requested in writing per the statute. *For associations managed by common interest community managers*, increases the timeframe from five (5) calendar days to five (5) business days.

[Reminder: Va. Code 54.1-2345 defines a "common interest community manager" as a person or business entity, including but not limited to a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.]

5. **Section 55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules.** For actions authorized in this Section (e.g., assessing violation charges), adds an explicit requirement to give the owner an opportunity to cure. Also, added language that confirms previously-existing authority to file or defend lawsuits in

circuit court and general district court for violations of condominium instruments and rules.

6. **Section 55-79.83. Liability for common expenses; late fees.** Amends last year's new late fee provision to clarify that, unless the recorded covenants or rules adopted pursuant thereto provide otherwise, boards have the authority to levy late fees on assessments (or any installments thereof) not paid within 60 days of the due date, up to a maximum of the penalty for nonpayment of taxes specified in Va. Code Section 58.1-3819 (currently 5%).
7. **Section 55-79.88. Limitations on dispositions of units.** Decreases from ten (10) days to five (5) days the timeframe within which the initial purchaser of a unit can cancel its contract with the declarant after receiving the public offering statement or after the contract date, whichever is later. Also specifies the location and minimum font size for declarant's contract provision that informs the purchaser of the right to cancel.
8. **Section 55-79.90. Public offering statement; condominium securities.** Requires the public offering statement to contain disclosure of right to cancel purchase contract, consistent with the above-referenced Section 55-79.88.
9. **Section 55-79.97. Resale by purchaser.** Restates that the choice of the method of delivery (hard copy or electronic, if offered) is at the option/choice of the seller or seller's agent. Also adds that if the resale certificate is delivered by commercial overnight delivery or UPS, then the purchaser has three days after receipt to cancel the purchase contract (same as when delivered by hand or electronically).
10. **Section 55-79.97:1. Fees for resale certificate.** Clarifies that the statutory provisions do not authorize associations or community managers to charge a fee for inspecting a unit except as specified in the resale certificate provisions. In addition, for the one fee for electronic delivery, the resale certificate request can require that the electronic copy be sent to any or all of the following recipients: seller, seller's agent, purchaser, purchaser's agent, and not more than one other person designated by requestor. Also states that no additional fees are allowed for accessing the association or manager's website.

Amendments to the Property Owners' Association Act

1. **Section 55-509.3. Association charges.** Clarifies that the statutory provisions do not authorize associations or community managers to charge a fee for inspecting a lot except as specified in the resale packet provisions.
2. **Section 55-509.4. Contract disclosure statement; right of cancellation.** Adds that if the resale packet is delivered by commercial overnight delivery or UPS, then the purchaser has three days after receipt to cancel the purchase contract (same as when delivered by hand or electronically).
3. **Section 55-509.6. Fees for disclosure packet; professionally managed associations.** Restates that the choice of the method of delivery (hard copy or electronic, if offered) is

at the option/choice of the seller or seller's agent, as specified in the written request. Restates that no additional fees are allowed for accessing association or manager's website (note: similar provision is already in Sec. 55-509.5(D) of POA Act). In addition, for the one fee for electronic delivery, the resale certificate request can require that the electronic copy be sent to any or all of the following recipients: seller, seller's agent, purchaser, purchaser's agent, and not more than one other person designated by requestor.

4. **Section 55-510. Access to association records; association meetings; notice.** *For self-managed associations*, increases from five (5) calendar days to ten (10) business days the timeframe to provide access to association books and records once requested in writing per the statute. *For associations managed by common interest community managers*, increases the timeframe from five (5) calendar days to five (5) business days.

[Reminder: Va. Code 54.1-2345 defines a "common interest community manager" as a person or business entity, including but not limited to a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.]

5. **Section 55-513. Adoption and enforcement of rules.** For actions authorized in this Section (e.g., assessing violation charges), adds an explicit requirement to give the owner an opportunity to cure. Also, added language that confirms previously-existing authority to file or defend lawsuits in circuit court and general district court for violations of the declaration and rules. For suits to enforce rules and regulations, provides that the prevailing party may be awarded attorney's fees.
6. **Section 55-513.3. Assessments; late fees.** Amends last year's new late fee provision to clarify that, unless the recorded covenants or rules adopted pursuant thereto provide otherwise, boards have the authority to levy late fees on assessments (or any installments thereof) not paid within 60 days of the due date, up to a maximum of the penalty for nonpayment of taxes specified in Va. Code Section 58.1-3819 (currently 5%).
7. **Section 55-515. Compliance with declaration.** Confirms that this compliance provision does not preclude (or prevent) lawsuits against associations, and that the prevailing party in lawsuits can recover reasonable attorneys' fees, costs and interest on the judgment.
8. **New Section 55-515.2:1. Reformation of declaration; judicial procedure.** Provides a procedure for associations to seek relief from courts to reform (i.e., fix) declarations if the association has attempted three times, without success, to amend the condominium instruments regarding ownership of legal title of the common areas or real property.

Amendments Related to Solar Energy Collection Devices

1. **Section 67-701. Covenants regarding solar power.** Clarifies existing language preventing community associations from prohibiting the installation of solar panels, unless the recorded declaration for that community association establishes such a prohibition. However, associations may still restrict the size, place and manner of

placement or installation of solar panels, and may still prohibit and restrict solar panels on common area/common elements.

NOTE: The texts of selected amendments are set forth below, showing the differences between the 2013 and 2014 versions of the statutory provisions. *Italics* indicate new language, while a ~~strikethrough~~ indicates deleted language.

Amendments to the Condominium Act

§ 55-79.53. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55-79.80. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. *This section shall not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.*

...

§ 55-79.71:2. Merger or consolidation of condominiums; procedure.

A. *Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.*

B. *An agreement to merge or consolidate two or more condominiums pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.*

C. *Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, and provided that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the*

percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

D. *If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation shall become effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § 55-79.73:1.*

§ 55-79.73:2. Reformation of declaration; judicial procedure.

A. *A unit owners' association may petition the circuit court in the county or city wherein the condominium or the greater part thereof is located to reform the condominium instruments where the unit owners' association, acting through its executive organ, has attempted to amend the condominium instruments regarding ownership of legal title of the common elements or real property using provisions outlined therein to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.*

B. *The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common elements or real property to:*

1. *Reform, in whole or in part, any provision of the condominium instruments; and*
2. *Correct mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose.*

C. *A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:*

1. *The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;*

2. *There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;*

3. *Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association;*

4. *A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and*

5. *A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.*

D. *Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55-79.73:1.*

§ 55-79.74:1. Books, minutes and records; inspection.

...

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. ~~This~~ *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 a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identifying identify the purpose for the request and the specific books and records of the unit owners' association requested.*

...

§ 55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules.

A. The unit owners' association shall have the power, to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests or other invitees are responsible.

B. ~~Before any such suspension or charges may be imposed~~ *action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55-79.75. If the violation remains uncorrected, the unit owner shall be given an opportunity*

to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

Notice of such hearing, including the ~~charges or other sanctions~~ *actions* that may be imposed ~~taken by the unit owners' association in accordance with this section~~, shall, at least 14 days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address ~~or addresses~~ required for notices of meetings pursuant to § 55-79.75. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75.

C. The amount of any charges so assessed shall not exceed \$50 for a single offense, or \$10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55-79.84. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

D. *The unit owners' association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or duly adopted rules and regulations.*

E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit owners' association, by and through its counsel to collect the charges, *or* obtain injunctive relief and correct the violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

...

~~E.F.~~ This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

§ 55-79.83. Liability for common expenses; late fees.

...

H. Except to the extent that the condominium instruments or rules or regulations promulgated pursuant thereto provide otherwise, an executive organ may impose a late fee, *not to exceed the penalty provided in § 58.1-3915*, for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment. ~~Except to the extent that the condominium instruments provide otherwise, no such late fee shall exceed the penalty provided in § 58.1-3915.~~

§ 55-79.88. Limitations on dispositions of units.

...

2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within ~~ten~~ *five* calendar days from the contract date of the disposition, or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice thereof hand-

delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

3. *The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12 point type.*

§ 55-79.90. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following:

...

9. A statement that, *pursuant to subdivision A 2 of § 55-79.88*, the purchaser may cancel the disposition within ~~ten~~ *five calendar* days of delivery of the current public offering statement, or within ~~ten~~ *five calendar* days of the contract date of the disposition, whichever is later;

...

§ 55-79.97. Resale by purchaser.

...

C. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered ~~or~~, delivered by electronic means, *or delivered by a commercial overnight delivery service or the United Parcel Service*, and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

...

The resale certificate shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, *at the option of the seller or his 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. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

...

§ 55-79.97:1. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such other services as are set out in this section. *Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.*

B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

...

2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of \$125, for ~~no more than two~~ *an electronic copies copy 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 requestor.* Only one fee shall be charged for the preparation and delivery of the resale certificate;

...

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. *No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website.* The unit owners' association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or his authorized agent will know such fees at the time of requesting the resale certificate.

...

Amendments to the Property Owners' Association Act

§ 55-509.3. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55-509.6 or 55-509.7 that is not expressly authorized in those sections. *Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55-509.6 or 55-509.7.*

§ 55-509.4. Contract disclosure statement; right of cancellation.

...

C. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i) within

three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered ~~or~~, delivered by electronic means, *or delivered by a commercial overnight delivery service or the United Parcel Service*, and a receipt obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

...

§ 55-509.6. Fees for disclosure packet; professionally managed associations.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55-509.5, and for such other services as set out in this section. The seller or his authorized agent shall specify *in writing* whether the disclosure packet shall be delivered electronically or in hard copy, *at the option of the seller or his authorized agent*, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent.

B. A reasonable fee may be charged by the preparer as follows for:

...

2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed *a total of \$125 for no more than two an electronic copies copy 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 requestor*. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

...

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. *No additional fee shall be charged for access to the association's or common interest community manager's website*. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or his authorized agent will know such fees at the time of requesting the packet.

...

§ 55-510. Access to association records; association meetings; notice.

...

~~This~~ *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 identifying identifies* the purpose for the request and the specific books and records of the association requested.

...

§ 55-513. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose, shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or *actual* damages, during which the court may award to the ~~association~~ *prevailing party* court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

~~C. Before any such charges or suspension may be imposed~~ *action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.*

~~Notice of a hearing, including the charges or other sanctions-actions that may be imposed~~ *taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.*

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. *The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.*

F. After the date a lawsuit is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges; *or* obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

G. In any suit filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

§ 55-513.3. Assessments; late fees.

Except to the extent that the declaration or any rules or regulations promulgated pursuant thereto provides otherwise, the board may impose a late fee for, *not to exceed the penalty provided in § 58.1-3915*, any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment. ~~Except to the extent that the declaration provides otherwise, no such late fee shall exceed the penalty provided in § 58.1-3915.~~

§ 55-515. Compliance with declaration.

A. Every lot owner, and all those entitled to occupy a lot shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association, or by its board of directors or any managing agent on behalf of such association, or in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. *This section shall not preclude an action against the association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.*

...

§ 55-515.2:1. Reformation of declaration; judicial procedure.

A. *An association may petition the circuit court in the county or city wherein the development or the greater part thereof is located to reform a declaration where the association, acting through its board of directors, has attempted to amend the declaration regarding ownership of legal title of the common areas or real property using provisions outlined therein to resolve (i) ambiguities or*

inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common areas or real property to:

- 1. Reform, in whole or in part, any provision of a declaration; and*
- 2. Correct mistakes or any other error in the declaration that may exist with respect to the declaration for any other purpose.*

C. A petition filed by the association with the court setting forth any inconsistency or error made in the declaration, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided that:

- 1. The association has made three good faith attempts to convene a duly called meeting of the association to present for consideration amendments to the declaration for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the association;*
- 2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;*
- 3. Where the declarant of the development still owns a lot or other property in the development, the declarant joins in the petition of the association;*
- 4. A copy of the petition is sent to all owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association; and*
- 5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association.*

D. Any mortgagee of a lot in the development shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55-515.1.

Amendments Related to Solar Energy Collection Devices

§ 67-701. Covenants regarding solar power.

A. ~~Effective July 1, 2008, no~~ No community association shall prohibit an owner from installing ~~or using~~ a solar energy collection device on that owner's property *unless the recorded declaration for that community association establishes such a prohibition.* However a community

association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55-79.97 and any disclosure packet pursuant to § 55-509.5, as applicable, given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

B. The community association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the community association. A community association may establish reasonable restrictions as to the size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

~~C. This section shall not apply with respect to any provision of a restrictive covenant that restricts the installation or use of any solar collection device if such provision became effective prior to July 1, 2008.~~

~~Nothing in this section shall be construed to (i) invalidate any provision of a restrictive covenant that prohibits or restricts the installation or use of any solar collection device if such provision was in effect before July 1, 2008, or (ii) prohibit the amendment of a restrictive covenant to prohibit or restrict the installation or use of any solar collection device, or to remove prohibitions or restrictions on the installation or use of any solar collection device if such amendment is adopted by the membership of the community association in accordance with such association's governing documents.~~

QUICK REFERENCE WORD INDEX

ABBREVIATIONS USED IN THE CODE OF VIRGINIA

cf. = compare

et seq. = and following

infra = see within the text below

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