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HOUSE BILL NO. 516**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on General Laws and Technology
on February 27, 2008)

(Patron Prior to Substitute—Delegate Suit)

A *BILL to amend and reenact §§ 54.1-2105.1, 54.1-2130, 55-79.41, 55-79.58, 55-79.58:1, 55-79.74, 55-79.79, 55-79.81, 55-79.84:1, 55-79.86, 55-79.89, 55-79.93:1, 55-79.95, 55-79.97, 55-362, 55-362.1, 55-374.1, 55-374.2, 55-375, 55-392.1, 55-484, 55-487, 55-496, 55-504.1, 55-508, 55-509, 55-509.2, 55-510, 55-513, 55-513.1, 55-514, 55-514.2, 55-516.1, 55-528, 55-529, and 55-530 of the Code of Virginia; to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 23.3, consisting of sections numbered 54.1-2345 through 54.1-2354, by adding sections numbered 55-79.97:1 through 55-79.97:3, by adding sections numbered 55-509.3 through 55-509.10, and by adding in Chapter 29 of Title 55 a section numbered 55-530.1; and to repeal §§ 55-511 and 55-512 of the Code of Virginia, relating to common interest communities.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2105.1, 54.1-2130, 55-79.41, 55-79.58, 55-79.58:1, 55-79.74, 55-79.79, 55-79.81, 55-79.84:1, 55-79.86, 55-79.89, 55-79.93:1, 55-79.95, 55-79.97, 55-362, 55-362.1, 55-374.1, 55-374.2, 55-375, 55-392.1, 55-484, 55-487, 55-496, 55-504.1, 55-508, 55-509, 55-509.2, 55-510, 55-513, 55-513.1, 55-514, 55-514.2, 55-516.1, 55-528, 55-529, and 55-530 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 23.3, consisting of sections numbered 54.1-2345 through 54.1-2354, by adding sections numbered 55-79.97:1 through 55-79.97:3, by adding sections numbered 55-509.3 through 55-509.10, and by adding in Chapter 29 of Title 55 a section numbered 55-530.1 as follows:

§ 54.1-2105.1. Other powers and duties of the Real Estate Board.

In addition to the provisions of §§ 54.1-2105.01 through 54.1-2105.04, the Board shall:

1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1;

3. Develop ~~develop~~ a residential property disclosure statement form for use in accordance with the provisions of Chapter 27 (§ 55-517 et seq.) of Title 55; and

4. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to § 55-512, 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, and 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.

§ 54.1-2130. Definitions.

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship. Agency includes representation of a client as a standard agent or a limited service agent. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall have no obligations under §§ 54.1-2131 through 54.1-2135 of this article.

"Brokerage agreement" means the agreement by which a real estate licensee represents a client in a brokerage relationship.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

"Client" means a person who has entered into a brokerage relationship with a licensee.

"Common source information company" means any person, firm, or corporation that is a source,

60 compiler, or supplier of information regarding real estate for sale or lease and other data and includes,
61 but is not limited to, multiple listing services.

62 "Customer" means a person who has not entered into a brokerage relationship with a licensee but for
63 whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a
64 brokerage relationship with such person, it shall be presumed that such person is a customer of the
65 licensee rather than a client.

66 "Designated agent" or "designated representative" means a licensee who has been assigned by a
67 principal or supervising broker to represent a client when a different client is also represented by such
68 principal or broker in the same transaction.

69 "Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both
70 seller and buyer, or both landlord and tenant, in the same real estate transaction.

71 "Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.) of
72 Chapter 21 of this title.

73 "Limited service representative" means a licensee who acts for or represents a client with respect to
74 real property containing from one to four residential units, pursuant to a brokerage agreement that
75 provides that the limited service representative will not provide one or more of the duties set forth in
76 subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service
77 representative shall have the obligations set out in the brokerage agreement, except that a limited service
78 representative shall provide the client, at the time of entering the brokerage agreement, copies of any
79 and all disclosures required by federal or state law, or local disclosures expressly authorized by state
80 law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client
81 under the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a
82 condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as
83 purchaser, the condominium resale certificate required by § 55-79.97; and (iii) if the client is selling a
84 property subject to the Property Owners' Association Act (§ 55-508 et seq.), the rights and obligations of
85 the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet
86 required by § ~~55-512~~ 55-509.5. A limited service representative may act as the agent or representative of
87 the client only by so providing in writing in the brokerage agreement. If the brokerage agreement does
88 not so state, the limited service representative shall be deemed as acting as an independent contractor of
89 the client.

90 "Ministerial acts" means those routine acts which a licensee can perform for a person which do not
91 involve discretion or the exercise of the licensee's own judgment.

92 "Standard agent" means a licensee who acts for or represents a client in an agency relationship. A
93 standard agent shall have the obligations as provided in this article and any additional obligations agreed
94 to by the parties in the brokerage agreement.

95 CHAPTER 23.3.

96 COMMON INTEREST COMMUNITIES.

97 § 54.1-2345. Definitions.

98 *As used in this chapter, unless the context requires a different meaning:*

99 "Association" means the same as that term is defined in § 55-528.

100 "Board" means the Common Interest Community Board.

101 "Common interest community" means the same as that term is defined in § 55-528; provided that for
102 the purposes of this chapter only, a common interest community shall not include any time-share project
103 registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) or any additional land
104 that is a part of such registration.

105 "Common interest community manager" means a person or business entity, including but not limited
106 to a partnership, association, corporation, or limited liability company, who, for compensation or
107 valuable consideration, provides management services to a common interest community.

108 "Declaration" means the same as that term is defined in § 55-528.

109 "Governing board" means the governing board of an association, including the executive organ of a
110 condominium unit owners' association, the executive board of a cooperative proprietary lessees'
111 association, and the board of directors or other governing body of a property owners' association.

112 "Lot" means the same as that term is defined in § 55-528.

113 "Management services" means (i) acting with the authority of an association in its business, legal,
114 financial, or other transactions with association members and nonmembers; (ii) executing the resolutions
115 and decisions of an association or, with the authority of the association, enforcing the rights of the
116 association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or
117 otherwise exercising dominion or control over money or other property belonging to an association; (iv)
118 preparing budgets, financial statements, or other financial reports for an association; (v) arranging,
119 conducting, or coordinating meetings of an association or the governing body of an association; (vi)
120 negotiating contracts or otherwise coordinating or arranging for services or the purchase of property
121 and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the

122 aforesaid acts or services on behalf of an association.

123 § 54.1-2346. License required; certification of employees; renewal; provisional license.

124 A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering
125 management services to a common interest community on or after October 1, 2008, shall hold a valid
126 license issued in accordance with the provisions of this chapter prior to engaging in such management
127 services.

128 B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering
129 management services to a common interest community without being licensed in accordance with the
130 provisions of this chapter, shall be subject to the provisions of § 54.1-111.

131 C. On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a
132 common interest community manager that all employees of the common interest community manager
133 who have principal responsibility for management services provided to a common interest community or
134 who have supervisory responsibility for employees who participate directly in the provision of
135 management services to a common interest community shall, within two years after employment with the
136 common interest community manager, hold a certificate issued by the Board certifying the person
137 possesses the character and minimum skills to engage properly in the provision of management services
138 to a common interest community or shall be under the direct supervision of a certified employee of such
139 common interest community manager. A common interest community manager shall notify the Board if a
140 certificated employee is discharged or in any way terminates his active status with the common interest
141 community manager.

142 D. It shall be a condition of the issuance or renewal of the license of a common interest community
143 manager that the common interest community manager shall obtain and maintain a blanket fidelity bond
144 or employee dishonesty insurance policy insuring the common interest community manager against
145 losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by
146 the common interest community manager. Such bond or insurance policy shall include coverage for
147 losses of clients of the common interest community manager resulting from theft or dishonesty committed
148 by the officers, directors, and persons employed by the common interest community manager. Such bond
149 or insurance policy shall provide coverage in an amount equal to the lesser of \$2 million or the highest
150 aggregate amount of the operating and reserve balances of all associations under the control of the
151 common interest community manager during the prior fiscal year. The minimum coverage amount shall
152 be \$10,000.

153 E. It shall be a condition of the issuance or renewal of the license of a common interest community
154 manager that the common interest community manager certifies to the Board (i) that the common
155 interest community manager is in good standing and authorized to transact business in Virginia; (ii)
156 that the common interest community manager has established a code of conduct for the officers,
157 directors, and persons employed by the common interest community manager to protect against conflicts
158 of interest; (iii) that the common interest community manager provides all management services
159 pursuant to written contracts with the associations to which such services are provided; (iv) that the
160 common interest community manager has established a system of internal accounting controls to
161 manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews
162 or audits the financial statements of the common interest community manager at least annually in
163 accordance with standards established by the American Institute of Certified Public Accountants or by
164 any successor standard-setting authorities.

165 F. The Board shall issue a provisional license to any person, partnership, corporation, or other
166 entity offering management services to a common interest community on or before December 31, 2008,
167 who makes application for licensure prior to January 1, 2009. Such provisional license will expire on
168 June 30, 2011, and may not be renewed. This subsection shall not be construed to limit the powers and
169 authority of the Board.

170 § 54.1-2347. Exceptions and exemptions generally.

171 A. The provisions of this chapter shall not be construed to prevent or prohibit:

172 1. An employee of a duly licensed common interest community manager from providing management
173 services within the scope of the employee's employment by the duly licensed common interest community
174 manager;

175 2. An employee of an association from providing management services for that association's common
176 interest community;

177 3. A resident of a common interest community acting without compensation from providing
178 management services for that common interest community;

179 4. A member of the governing board of an association acting without compensation from providing
180 management services for that association's common interest community;

181 5. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or
182 any person acting under order of any court from providing management services for a common interest

183 community;

184 6. A duly licensed attorney-at-law from representing an association or a common interest community
185 manager in any business that constitutes the practice of law;

186 7. A duly licensed certified public accountant from providing bookkeeping or accounting services to
187 an association or a common interest community manager;

188 8. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within
189 a common interest community; or

190 9. An association, exchange agent, exchange company, managing agent, or managing entity of a
191 time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.)
192 from providing management services for such time-share project.

193 B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that
194 the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection
195 shall be construed to require a person to be licensed in accordance with this chapter if he would be
196 otherwise exempt from such licensure.

197 § 54.1-2348. Common Interest Community Board; membership; meetings; quorum.

198 There is hereby created the Common Interest Community Board (the Board) as a policy board,
199 within the meaning of § 2.2-2100, in the executive branch of state government. Members of the Board
200 shall be appointed by the Governor and consist of eleven members as follows: three shall be
201 representatives of Virginia common interest community managers, one shall be a Virginia attorney
202 whose practice includes the representation of associations, one shall be a representative of a Virginia
203 certified public accountant whose practice includes providing attest services to associations, one shall be
204 a representative of the Virginia time-share industry, two shall be representatives of developers of
205 Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who
206 has served on the governing board of an association and two of whom reside in a common interest
207 community. Of the initial appointments, one representative of Virginia common interest community
208 managers and one representative of developers of Virginia common interest communities shall serve
209 terms of two years and one representative of Virginia common interest community managers and one
210 representative of developers of Virginia common interest communities shall serve terms of three years;
211 the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall
212 serve a term of one year; the Virginia citizen who serves or who has served on the governing board of
213 an association shall serve a term of two years, and the two Virginia citizens who reside in a common
214 interest community shall serve terms of one year. All other initial appointments and all subsequent
215 appointments shall be for terms for four years, except that vacancies may be filled for the remainder of
216 the unexpired term. Each appointment of a representative of a Virginia common interest community
217 manager to the Board may be made from nominations submitted by the Virginia Association of
218 Community Managers, who may nominate no more than three persons for each manager vacancy. In no
219 case shall the Governor be bound to make any appointment from such nominees. No person shall be
220 eligible to serve for more than two successive four-year terms.

221 The Board shall meet at least four times each year and at other such times as it deems necessary.
222 The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one
223 year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties
224 necessary to execute the purposes of this chapter.

225 § 54.1-2349. Powers and duties of the Board.

226 A. The Board shall administer and enforce the provisions of this chapter. In addition to the
227 provisions of § 54.1-201, the Board shall:

228 1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with
229 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the
230 prescription of fees, procedures, and qualifications for the issuance and renewal of common interest
231 community manager licenses. The Board shall annually assess each common interest community
232 manager an amount equal to the lesser of \$1,000 (or such other amount as the Board may establish by
233 regulation) or 0.02 percent of the gross receipts from common interest community management during
234 the preceding calendar year to be remitted to the State Treasurer and placed to the credit of the
235 Common Interest Community Management Information Fund established pursuant to § 55-529;

236 2. Establish criteria for the licensure of common interest community managers to ensure the
237 appropriate training and educational credentials for the provision of management services to common
238 interest communities. Such criteria may include experiential requirements and shall include designation
239 as an Accredited Association Management Company by the Community Associations Institute. As an
240 additional alternative to such designation, the Board shall have authority, by regulation, to include one
241 of the following: (i) successful completion of another Board-approved training program and certifying
242 examination, or (ii) successful completion of a Virginia testing program to determine the quality of the
243 training and educational credentials for and competence of common interest community managers;

244 3. Establish criteria for the certification of the employees of common interest community managers

245 who have principal responsibility for management services provided to a common interest community or
 246 who have supervisory responsibility for employees who participate directly in the provision of
 247 management services to a common interest community to ensure the person possesses the character and
 248 minimum skills to engage properly in the provision of management services to a common interest
 249 community. Such criteria shall include designation as a Certified Manager of Community Associations
 250 by the National Board of Certification for Community Association Managers, designation as an
 251 Association Management Specialist by the Community Associations Institute, or designation as a
 252 Professional Community Association Manager by the Community Associations Institute. As an additional
 253 alternative to such designations, the Board shall have authority, by regulation, to include one of the
 254 following: (i) successful completion of another Board-approved training program and certifying
 255 examination, or (ii) successful completion of a Virginia testing program to determine the quality of the
 256 training and educational credentials for and competence of the employees of common interest community
 257 managers who participate directly in the provision of management services to a common interest
 258 community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common
 259 Interest Community Management Information Fund established pursuant to § 55-529;

260 4. Approve the criteria for accredited common interest community manager training programs;

261 5. Approve accredited common interest community manager training programs;

262 6. Establish, by regulation, standards of conduct for common interest community managers and for
 263 employees of common interest community managers certified in accordance with the provisions of this
 264 chapter; and

265 7. Establish, by regulation, an education-based certification program for persons who are involved in
 266 the business or activity of providing management services to common interest communities. The Board
 267 shall have the authority to approve training courses and instructors in furtherance of the provisions of
 268 this chapter.

269 B. The Board shall have the sole responsibility for the administration of this chapter and for the
 270 promulgation of regulations to carry out the requirements thereof. The Board shall also be responsible
 271 for the enforcement of this chapter, provided that the Real Estate Board shall have the sole
 272 responsibility for the enforcement of this chapter with respect to a real estate broker, real estate
 273 salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.)
 274 who is also licensed as a common interest community manager.

275 C. The Board is authorized to obtain criminal history record information from any state or federal
 276 law-enforcement agency relating to an applicant for licensure or certification. Any information so
 277 obtained is for the exclusive use of the Board and shall not be released to any other person or agency
 278 except in furtherance of the investigation of the applicant or with the authorization of the applicant or
 279 upon court order.

280 § 54.1-2350. Annual report and disclosure packets.

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

282 1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

283 2. Develop and disseminate an association annual report form for use in accordance with
 284 §§ 55-79.93:1, 55-504.1, and 55-516.1; and

285 3. Develop and disseminate a one-page form to accompany association disclosure packets required
 286 pursuant to § 55-509.5, which form shall summarize the unique characteristics of property owners'
 287 associations generally and shall make known to prospective purchasers the unusual and material
 288 circumstances affecting a lot owner in a property owners' association, including but not limited to the
 289 obligation of a lot owner to pay regular annual or special assessments to the association, the penalty
 290 for failure or refusal to pay such assessments, the purposes for which such assessments may be used,
 291 and the importance the declaration of restrictive covenants and other governing documents play in
 292 association living.

293 § 54.1-2351. General powers and duties of Board concerning associations.

294 A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with
 295 and in furtherance of the objectives of this chapter, but the Board may not intervene in the internal
 296 activities of an association except to the extent necessary to prevent or cure violations of this chapter or
 297 of the chapter pursuant to which the association is created. The Board may prescribe forms and
 298 procedures for submitting information to the Board.

299 B. If it appears that any person has engaged, is engaging, or is about to engage in any act or
 300 practice in violation of this chapter, Chapters 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24
 301 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders, the Board without prior
 302 administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for
 303 other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at
 304 law exists.

305 C. The Board may intervene in any action or suit involving a violation by a declarant or a developer

306 of a time-share project of this chapter, Chapters 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24
307 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders.

308 D. The Board may accept grants-in-aid from any governmental source and may contract with
309 agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of
310 this chapter.

311 E. The Board may cooperate with agencies performing similar functions in this and other
312 jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform
313 administrative practices, and may develop information that may be useful in the discharge of the
314 Board's duties.

315 F. In issuing any cease and desist order the Board shall state the basis for the adverse determination
316 and the underlying facts.

317 G. Without limiting the remedies that may be obtained under this chapter, the Board, without
318 compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce
319 the provisions of this section and may institute proceedings in equity to enjoin any person, partnership,
320 corporation, or any other entity violating this chapter, Chapters 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et
321 seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders. Such proceedings
322 shall be brought in the name of the Commonwealth by the Board in the circuit court or general district
323 court of the city or county in which the unlawful act occurred or in which the defendant resides.

324 H. The Board may assess a monetary penalty to be paid to the Common Interest Community
325 Management Information Fund of not more than \$1,000 per violation against any person who violates
326 any provision of this section. In determining the amount of the penalty, the Board shall consider the
327 degree and extent of harm caused by the violation. No monetary penalty may be assessed under this
328 section unless the person has been given the opportunity for a hearing pursuant to the Administrative
329 Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the
330 Commonwealth.

331 § 54.1-2352. Cease and desist orders.

332 A. The Board may issue an order requiring the governing board of the association to cease and
333 desist from the unlawful practice and to take such affirmative action as in the judgment of the Board
334 will carry out the purposes of this chapter, if the Board determines after notice and hearing that the
335 governing board of an association has:

336 1. Violated any statute or regulation governing the association regulated pursuant to this chapter,
337 including engaging in any act or practice in violation of this chapter, Chapters 4.2 (§ 55-79.39 et seq.),
338 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's
339 regulations or orders;

340 2. Failed to register as an association or to file an annual report as required by statute or
341 regulation;

342 3. Materially misrepresented facts in an application for registration or an annual report; or

343 4. Willfully refused to furnish the Board information or records required or requested pursuant to
344 statute or regulation;

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

351 § 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest
352 community manager.

353 A. A common interest community manager owes a fiduciary duty to the associations to which it
354 provides management services with respect to the manager's handling the funds or the records of each
355 association. All funds deposited with the common interest community manager shall be handled in a
356 fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an
357 FDIC-insured financial institution separate from the assets of the common interest community manager.
358 The funds shall be the property of the association and shall be segregated for each depository in the
359 records of the common interest community manager in a manner that permits the funds to be identified
360 on an association basis. All records having administrative or fiscal value to the association that a
361 common interest community manager holds, maintains, compiles, or generates on behalf of a common
362 interest community are the property of the association. A common interest community manager may
363 retain and dispose of association records in accordance with a policy contained in the contract between
364 the common interest community manager and the association. Within a reasonable time after a written
365 request for any such records, the common interest community manager shall provide copies of the
366 requested records to the association at the association's expense. The common interest community
367 manager shall return all association records that it retains and any originals of legal instruments or

368 official documents that are in the possession of the common interest community manager to the
 369 association within a reasonable time after termination of the contract for management services without
 370 additional cost to the association. Records maintained in electronic format may be returned in such
 371 format.

372 B. If the Board has reasonable cause to believe that a common interest community manager is
 373 unable to properly discharge its fiduciary responsibilities to an association to which it provides
 374 management services, the Board may submit an ex parte petition to the circuit court of the city or
 375 county wherein the common interest community manager maintains an office or is doing business for the
 376 issuance of an order authorizing the immediate inspection by and production to representatives of the
 377 petitioner of any records, documents, and physical or other evidence belonging to the subject common
 378 interest community manager. The court may issue such order without notice to the common interest
 379 community manager if the petition, supported by affidavit of the petitioner and such other evidence as
 380 the court may require, shows reasonable cause to believe that such action is required to prevent
 381 immediate loss of property of one or more of the associations to which the subject common interest
 382 community manager provides management services. The court may also temporarily enjoin further
 383 activity by the common interest community manager and take such further action as shall be necessary
 384 to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The
 385 papers filed with the court pursuant to this subsection shall be placed under seal.

386 C. If the Board has reasonable cause to believe that a common interest community manager is
 387 unable to properly discharge its fiduciary responsibilities to an association to which it provides
 388 management services, the Board may file a petition with the circuit court of the county or city wherein
 389 the subject common interest community manager maintains an office or is doing business. The petition
 390 may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the
 391 disposition of any other assets belonging to or subject to the control of the subject common interest
 392 community manager; and (ii) the appointment of a receiver for all or part of the funds or property of
 393 the subject common interest community manager. The subject common interest community manager shall
 394 be given notice of the time and place of the hearing on the petition and an opportunity to offer
 395 evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post
 396 bond, with or without surety. The papers filed with the court under this subsection shall be placed under
 397 seal until such time as the court grants an injunction or appoints a receiver. The court may issue an
 398 injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a
 399 hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or
 400 more of the associations to which the subject common interest community manager provides
 401 management services.

402 D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to
 403 or having in his possession property, real or personal, belonging to or subject to the control of the
 404 subject common interest community manager's business and which property the Board reasonably
 405 believes may become part of the receivership assets, shall be served with a copy of the petition and
 406 notice of the time and place of the hearing.

407 E. The court shall describe the powers and duties of the receiver in its appointing order, which may
 408 be amended from time to time. The receiver shall, unless otherwise ordered by the court in the
 409 appointing order, (i) prepare and file with the Board a list of all associations managed by the subject
 410 common interest community manager; (ii) notify in writing all of the associations to which the subject
 411 common interest community manager provides management services of the appointment, and take
 412 whatever action the receiver deems appropriate to protect the interests of the associations until such
 413 time as the associations have had an opportunity to obtain a successor common interest community
 414 manager; (iii) facilitate the transfer of records and information to such successor common interest
 415 community manager; (iv) identify and take control of all bank accounts, including without limitation
 416 trust and operating accounts, over which the subject common interest community manager had signatory
 417 authority in connection with its management business; (v) prepare and submit an accounting of receipts
 418 and disbursements and account balances of all funds under the receiver's control for submission to the
 419 court within four months of the appointment and annually thereafter until the receivership is terminated
 420 by the court; (vi) attempt to collect any accounts receivable related to the subject common interest
 421 community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from
 422 the subject common interest community manager's business, or assets acquired with funds wrongfully
 423 diverted from the subject common interest community manager's business; (viii) terminate the subject
 424 common interest community manager's business; (ix) reduce to cash all of the assets of the subject
 425 common interest community manager; (x) determine the nature and amount of all claims of creditors of
 426 the subject common interest community manager, including associations to which the subject common
 427 interest community manager provided management services; and (xi) prepare and file with the court a
 428 report of such assets and claims proposing a plan for the distribution of funds in the receivership to

429 *such creditors in accordance with the provisions of subsection F.*

430 *F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after*
431 *such notice as the court may require to creditors, the receiver shall distribute the assets of the common*
432 *interest community manager and funds in the receivership first to clients whose funds were or ought to*
433 *have been held in a fiduciary capacity by the subject common interest community manager, then to the*
434 *receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors*
435 *of the subject common interest community manager, and then to the subject common interest community*
436 *manager or its successors in interest.*

437 *G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the*
438 *court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses.*
439 *If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the*
440 *Common Interest Community Management Information Fund as a cost of administering the Fund*
441 *pursuant to § 55-530, to the extent that the said Fund has funds available. The Fund shall have a claim*
442 *against the subject common interest community manager for the amount paid.*

443 *H. The court may determine whether any assets under the receiver's control should be returned to*
444 *the subject common interest community manager.*

445 *I. If the Board shall find that any common interest community manager is insolvent, that its merger*
446 *into another common interest community manager is desirable for the protection of the associations to*
447 *which such common interest community manager provides management services, and that an emergency*
448 *exists, and, if the board of directors of such insolvent common interest community manager shall*
449 *approve a plan of merger of such common interest community manager into another common interest*
450 *community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such*
451 *insolvent common interest community manager and the approval by the Board of such plan of merger*
452 *shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of*
453 *such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.)*
454 *of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent,*
455 *that the acquisition of its assets by another common interest community manager is in the best interests*
456 *of the associations to which such common interest community manager provides management services,*
457 *and that an emergency exists, it may, with the consent of the boards of directors of both common*
458 *interest community managers as to the terms and conditions of such transfer, including the assumption*
459 *of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent*
460 *common interest community manager to such other common interest community manager, and no*
461 *compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730*
462 *through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale*
463 *of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or*
464 *sale of assets be sent to the stockholders of record of the insolvent common interest community manager*
465 *for the purpose of providing such shareholders an opportunity to challenge the finding that the common*
466 *interest community manager is insolvent. The relevant books and records of such insolvent common*
467 *interest community manager shall remain intact and be made available to such shareholders for a*
468 *period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a*
469 *hearing before the Board is not requested by any such shareholder within such 30-day period. If, after*
470 *such hearing, the Board finds that such common interest community manager was solvent, it shall*
471 *rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be*
472 *rescinded. But if, after such hearing, the Board finds that such common interest community manager*
473 *was insolvent, its order shall be final.*

474 *J. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to*
475 *protect the interests of associations adversely affected by common interest community managers who*
476 *have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in*
477 *order to protect those interests and thereby the public's interest in the quality of management services*
478 *provided by Virginia common interest community managers.*

479 *§ 54.1-2354. Variation by agreement.*

480 *Except as expressly provided in this chapter, provisions of this chapter may not be varied by*
481 *agreement, and rights conferred by this chapter may not be waived. All management agreements entered*
482 *into by common interest community managers shall comply with the terms of this chapter and the*
483 *provisions of Chapters 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26*
484 *(§ 55-508 et seq.) of Title 55, as applicable.*

485 *§ 55-79.41. Definitions.*

486 *When used in this chapter:*

487 *"Capital components" means those items, whether or not a part of the common elements, for which*
488 *the unit owners' association has the obligation for repair, replacement or restoration and for which the*
489 *executive organ determines funding is necessary.*

490 *"Common elements" means all portions of the condominium other than the units.*

491 "Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit
 492 owners' association, together with all funds lawfully assessed for the creation and/or maintenance of
 493 reserves pursuant to the provisions of the condominium instruments.

494 "*Common interest community manager*" means the same as that term is defined in § 54.1-2345.

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

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

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

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

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

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

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

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

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

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

537 "Executive organ" means an executive and administrative entity, by whatever name denominated,
 538 designated in the condominium instruments as the governing body of the unit owners' association.

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

541 "*Financial update*" means an update of the financial information referenced in subdivisions C 2
 542 through C 7 of § 55-79.97.

543 "Future common expenses" means common expenses for which assessments are not yet due and
 544 payable.

545 "Identifying number" means one or more letters and/or numbers that identify only one unit in the
 546 condominium.

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

552 "Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both
553 upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace
554 constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient
555 description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the
556 parcel in question be identified with reference to established datum.

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

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

564 "Meeting" or "meetings" means the formal gathering of the executive organ where the business of the
565 unit owners' association is discussed or transacted.

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

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

579 "Officer" means any member of the executive organ or official of the unit owners' association.

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

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

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

594 "*Resale certificate update*" means an update of the financial information referenced in subdivisions C
595 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the original resale
596 certificate.

597 "*Settlement agent*" means the same as that term is defined in § 6.1-2.20.

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

604 "Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or
605 group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a
606 contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or
607 remove any officers of the unit owners' association or the executive organ pursuant to subsection A of
608 § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument
609 or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain
610 sales offices, management offices, model units and signs pursuant to § 55-79.66.

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

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

618 § 55-79.58. Contents of plats and plans.

619 A. There shall be recorded simultaneously with the declaration one or more plats of survey showing
620 the location and dimensions of the submitted land, the location and dimensions of any convertible lands
621 within the submitted land, the location and dimensions of any existing improvements, the intended
622 location and dimensions of any contemplated improvements which are to be located on any portion of
623 the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible,
624 the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to
625 this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats
626 shall indicate the distances between the parcels constituting the submitted land. The plats shall label
627 every convertible land as a convertible land, and if there is more than one such land the plats shall label
628 each such land with one or more letters and/or numbers different from those designating any other
629 convertible land and different also from the identifying number of any unit. The plats shall show the
630 location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable
631 land. The plats shall show the location and dimensions of any additional lands and shall label each such
632 land as an additional land. If, with respect to any portion or portions, but less than all, of the submitted
633 land, the unit owners are to own only an estate for years, the plats shall show the location and
634 dimensions of any such portions, and shall label each such portion as a leased land. If there is more
635 than one withdrawable land, or more than one leased land, the plats shall label each such land with one
636 or more letters and/or numbers different from those designating any convertible land or other
637 withdrawable or leased land, and different also from the identifying number of any unit. The plats shall
638 show all easements to which the submitted land or any portion thereof is subject, and shall show the
639 location and dimensions of all such easements to the extent feasible. The plats shall also show all
640 encroachments by or on any portion of the condominium. In the case of any improvements located or to
641 be located on any portion of the submitted land other than within the boundaries of any convertible
642 lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "(NOT YET
643 BEGUN)," and which, if any, have been begun but have not been substantially completed by the use of
644 the phrase "(NOT YET COMPLETED)." In the case of any units the vertical boundaries of which lie
645 wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously
646 recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that
647 they are not shown on such plans, and the units or portions thereof thus depicted shall bear their
648 identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and
649 compliance with the provisions of this subsection by a licensed land surveyor, and the said surveyor
650 shall certify in such document or on the face of the plat that all units or portions thereof depicted
651 thereon pursuant to the preceding sentence of this subsection have been substantially completed. The
652 specification within this subsection of items that shall be shown on the plats shall not be construed to
653 mean that the plats shall not also show all other items customarily shown or hereafter required for land
654 title surveys.

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

674 C. When converting all or any portion of any convertible land, or adding additional land to an

675 expandable condominium, the declarant shall record, with regard to any structures on the land being
676 converted, or added, either plats of survey conforming to the requirements of subsection A and plans
677 conforming to the requirements of subsection B, or certifications, conforming to the certification
678 requirements of said subsections, of plats and plans previously recorded pursuant to § 55-79.59.

679 D. Notwithstanding the provisions of subsection A and B, a time-share interest in a unit which has
680 been subjected to a time-share instrument pursuant to § 55-367 may be conveyed prior to substantial
681 completion of that unit if (i) a completion bond has been filed in compliance with subsection B of
682 § 55-79.58:1 and remains in full force and effect until the unit is certified as substantially complete in
683 accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring
684 the time-share estate in the unit certifies to the purchaser in writing, based on information provided by
685 the ~~Real Estate~~ *Common Interest Community* Board, that the bond has been filed with the ~~Real Estate~~
686 *Common Interest Community* Board.

687 E. When converting all or any portion of any convertible space into one or more units and/or limited
688 common elements, the declarant shall record, with regard to the structure or portion thereof constituting
689 that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit
690 and/or limited common elements formed out of such space. Such plans shall be certified as to their
691 accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer
692 or licensed land surveyor.

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

698 § 55-79.58:1. Bond to insure completion of improvements.

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

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

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

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

717 § 55-79.74. Control of condominium by declarant.

718 A. The condominium instruments may authorize the declarant, or a managing agent or some other
719 person or persons selected or to be selected by the declarant, to appoint and remove some or all of the
720 officers of the unit owners' association and/or its executive organ, or to exercise powers and
721 responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit
722 owners' association, the officers, or the executive organ. The declarant or the managing agent or such
723 other person or persons selected by the declarant to so appoint and remove officers and/or the executive
724 organ or to exercise such powers and responsibilities otherwise assigned to the unit owners' association,
725 the officers, or the executive organ shall be subject to liability as fiduciaries of the unit owners for their
726 action or omissions during the period of declarant control as specified in the condominium instruments
727 or if not so specified, within such period as defined in this section. But no amendment to the
728 condominium instruments shall increase the scope of such authorization if there is any unit owner other
729 than the declarant, and no such authorization shall be valid after the time limit set by the condominium
730 instruments or after units to which three-fourths of the undivided interests in the common elements
731 appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only,
732 the calculation of the fraction of undivided interest shall be based upon the total undivided interests
733 assigned or to be assigned to all units registered with the ~~Real Estate~~ *Common Interest Community* Board
734 pursuant to subsection B of § 55-79.92 hereof and described pursuant to subdivision (4) of subsection
735 (a), subdivision (2) of subsection (b), or subdivision (8) of subsection (c), of § 55-79.54. The time limit
736 initially set by the condominium instruments shall not exceed five years in the case of an expandable

737 condominium, three years in the case of a condominium (other than an expandable condominium)
738 containing any convertible land, or two years in the case of any other condominium. Such time period
739 shall commence upon settlement of the first unit to be sold in any portion of the condominium.

740 B. If entered into any time prior to the expiration of the period of declarant control contemplated by
741 subsection A hereof, no contract or lease entered into with the declarant or any entity controlled by the
742 declarant, management contract, employment contract or lease of recreational or parking areas or
743 facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its
744 executive organ, or the unit owners as a group, shall be entered into for a period in excess of two years.
745 Any such contract or agreement entered into on or after July 1, 1978, may be terminated without
746 penalty by the unit owners' association or its executive organ upon not less than ninety days' written
747 notice to the other party given not later than sixty days after the expiration of the period of declarant
748 control contemplated by subsection A hereof. Any such contract or agreement may be renewed for
749 periods not in excess of two years; however, at the end of any two-year period the unit owners'
750 association or its executive organ may terminate any further renewals or extensions thereof. The
751 provisions of this subsection shall not apply to any lease or leases which are referred to in § 55-79.48 or
752 which are subject to subsection (e) of § 55-79.54.

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

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

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

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

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

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

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

793 § 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations for
794 warranty.

795 A. Except to the extent otherwise provided by the condominium instruments, all powers and
796 responsibilities, including financial responsibility, with regard to maintenance, repair, renovation,
797 restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the

798 case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part
799 thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from
800 a condition originating in or through the common elements or any apparatus located within the common
801 elements, in which case the unit owners' association shall have such powers and responsibilities. Each
802 unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or
803 employees of either such access through his unit as may be reasonably necessary to enable them to
804 exercise and discharge their respective powers and responsibilities. But to the extent that damage is
805 inflicted on the common elements or any unit through which access is taken, the unit owner causing the
806 same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

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

824 C. (See Editor's note) An action for breach of any warranty prescribed by this section shall be
825 commenced within five years after the date such warranty period began. However, no such action shall
826 be maintained against the declarant unless a written statement by the claimant or his agent, attorney or
827 representative, of the nature of the alleged defect has been sent to the declarant, by registered or
828 certified mail, at his last known address, as reflected in the records of the *Real Estate Common Interest*
829 *Community Board*, more than six months prior to the commencement of the action giving the declarant
830 an opportunity to cure the alleged defect within a reasonable time. Sending the notice required by this
831 subsection shall toll the statute of limitations for commencing a breach of warranty action for a period
832 not to exceed six months.

833 § 55-79.81. Insurance.

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

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

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

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

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

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

860 unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of
861 § 55-79.75.

862 § 55-79.84:1. Bond to be posted by declarant.

863 A. The declarant of a condominium containing units which are required by this chapter to be
864 registered with the ~~Real Estate~~ *Common Interest Community* Board shall post a bond in favor of the unit
865 owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such
866 sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the ~~Real~~
867 ~~Estate~~*Common Interest Community* Board and shall be maintained for so long as the declarant owns
868 more than ten percent of the units in the condominium or, if the declarant owns less than ten percent of
869 the units in the condominium, until the declarant is current in the payment of assessments. However, the
870 Board shall return a bond where the declarant owns one unit in a condominium containing less than ten
871 units, provided such declarant is current in the payment of assessments.

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

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

878 § 55-79.86. Administrative agency.

879 This chapter shall be administered by the ~~Real Estate~~ *Common Interest Community* Board which
880 hereinafter is called the agency.

881 § 55-79.89. Application for registration; fee.

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

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

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

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

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

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

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

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

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

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

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

913 11. The proposed public offering statement;

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

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

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

920 C. The declarant shall immediately report any material changes in the information contained in an

921 application for registration.

922 D. Each application shall be accompanied by a fee in an amount established by the agency pursuant
 923 to § 54.1-113. All fees shall be remitted by the agency to the State Treasurer, and shall be placed to the
 924 credit of the ~~special fund of the Real Estate Board, which fund is hereby established,~~ *Common Interest*
 925 *Community Management Information Fund established pursuant to § 55-529;* and shall be expended
 926 solely for compliance with the provisions of this chapter.

927 § 55-79.93:1. Annual report by unit owners' association.

928 A. The unit owners' association shall file an annual report in a form and at such time as prescribed
 929 by regulations of the agency. The filing of the annual report required by this section shall commence
 930 upon the termination of the declarant control period pursuant to § 55-79.74.

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

934 C. The annual report shall be accompanied by a fixed fee in an amount established by the agency,
 935 together with an annual assessment in an amount equal to the lesser of \$1,000 (or such other amount
 936 as the agency may establish by regulation) or 0.02 percent of the unit owners' association's gross
 937 assessment income during the preceding calendar year, ~~All fees shall~~ to be remitted to the State
 938 Treasurer and shall be placed to the credit of the Common Interest Community Management Fund
 939 established pursuant to § 55-529.

940 § 55-79.95. Escrow of deposits.

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

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

950 1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the
 951 Commonwealth, in the form and amount set forth below, or

952 2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts
 953 are insured by the FDIC, in the form and amount set forth below.

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

957 C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person
 958 protected under the provisions of this chapter. The declarant shall file the bond with the ~~Real Estate~~
 959 *Common Interest Community Board*. The surety bond may be either in the form of an individual bond
 960 for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the
 961 declarant under this chapter exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a
 962 blanket bond, the amount shall be as follows. If the amount of such deposits is:

963 1. \$75,000 or less, the blanket bond shall be \$75,000;

964 2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;

965 3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;

966 4. \$500,000 or more but less than \$1,000,000, the blanket bond shall be \$1,000,000; and

967 5. \$1,000,000 or more, the blanket bond shall be 100 percent of the amount of such deposits.

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

975 1. \$75,000 or less, the blanket letter of credit shall be \$75,000;

976 2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be \$200,000;

977 3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;

978 4. \$500,000 or more but less than \$1,000,000, the blanket letter of credit shall be \$1,000,000; and

979 5. \$1,000,000 or more, the blanket letter of credit shall be 100 percent of the amount of such
 980 deposits.

981 For the purposes of determining the amount of any blanket letter of credit that a declarant maintains
 982 in any calendar year, the total amount of deposits considered held by the declarant shall be determined

983 as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with
 984 the amount of deposits held as of May 31.

985 § 55-79.97. Resale by purchaser.

986 A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and
 987 subject to the provisions of subsection ~~F~~ and § 55-79.87 A, the unit owner shall disclose in the
 988 contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii)
 989 the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it
 990 to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale
 991 certificate, (iv) *if the purchaser has received the resale certificate*, the purchaser has a right to request
 992 ~~an update of the~~ *a resale certificate update or financial update* in accordance with ~~subsection D,~~
 993 *§ 55-79.97:1, as appropriate*, and (v) the right to receive the resale certificate and the right to cancel the
 994 contract are waived conclusively if not exercised before settlement.

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

997 C. The information contained in the resale certificate shall be current as of a date specified on the
 998 resale certificate. *A resale certificate update or a financial update may be requested as provided in*
 999 *§ 55-79.97:1, as appropriate*. The purchaser may cancel the contract (i) within three days after the date
 1000 of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser
 1001 signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is
 1002 hand delivered or delivered by electronic means and a receipt obtained; or (iii) within six days after the
 1003 postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of
 1004 cancellation shall be provided to the unit owner or his agent by one of the following methods:

1005 a. Hand delivery;

1006 b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which
 1007 may be either a United States postal certificate of mailing or a certificate of service prepared by the
 1008 sender confirming such mailing;

1009 c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may
 1010 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate
 1011 of service prepared by the sender confirming the electronic delivery; or

1012 d. Overnight delivery using a commercial service or the United States Postal Service.

1013 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of
 1014 cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be
 1015 returned promptly to the purchaser. ~~The unit owners' association may also send the resale certificate by~~
 1016 ~~electronic means unless either the seller or the purchaser requests a paper certificate.~~

1017 A resale certificate shall include the following:

1018 1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and,
 1019 if applicable, an appropriate statement pursuant to § 55-79.85;

1020 2. A statement of any expenditure of funds approved by the unit owners' association or the executive
 1021 organ which shall require an assessment in addition to the regular assessment during the current or the
 1022 immediately succeeding fiscal year;

1023 3. A statement, including the amount, of all assessments and any other fees or charges currently
 1024 imposed by the unit owners' association, *together with any known post-closing fee charged by the*
 1025 *common interest community manager, if any*, and associated with the purchase, disposition and
 1026 maintenance of the condominium unit and the use of the common elements, and the status of the
 1027 account;

1028 4. A statement whether there is any other entity or facility to which the unit owner may be liable for
 1029 fees or other charges;

1030 5. The current reserve study report or a summary thereof, a statement of the status and amount of
 1031 any reserve or replacement fund and any portion of the fund designated for any specified project by the
 1032 executive organ;

1033 6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit
 1034 owners' association and a copy of the statement of its financial ~~condition~~ *position (balance sheet)* for the
 1035 last fiscal year for which a statement is available, including a statement of the balance due of any
 1036 outstanding loans of the unit owners' association;

1037 7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit
 1038 owners' association is a party which either could or would have a material impact on the *unit owners'*
 1039 *association* or the unit owners or which relates to the unit being purchased;

1040 8. A statement setting forth what insurance coverage is provided for all unit owners by the unit
 1041 owners' association, including ~~any~~ *the* fidelity bond maintained by the unit owners' association, and
 1042 what additional insurance coverage would normally be secured by each individual unit owner;

1043 9. A statement that any improvements or alterations made to the unit, or the limited common

1044 elements assigned thereto, by the prior unit owner are *or are* not in violation of the condominium
1045 instruments;

1046 10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the
1047 unit owners' association and the amendments thereto;

1048 11. A statement of whether the condominium or any portion thereof is located within a development
1049 subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

1050 12. A copy of the notice given to the unit owner by the unit owners' association of any current or
1051 pending rule or architectural violation;

1052 13. *A copy of any approved minutes of the executive organ and unit owners' association meetings for*
1053 *the six calendar months preceding the request for the resale certificate.*

1054 14. Certification, if applicable, that the unit owners' association has filed with the Real Estate
1055 Common Interest Community Board the annual report required by § 55-79.93:1; which certification shall
1056 indicate the filing number assigned by the Real Estate Common Interest Community Board and the
1057 expiration date of such filing;

1058 ~~14-15.~~ A statement of any limitation on the number of persons who may occupy a unit as a dwelling;
1059 and

1060 ~~15-16.~~ A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner
1061 to display the flag of the United States, including, but not limited to reasonable restrictions as to the
1062 size, time, place, and manner of placement or display of such flag.

1063 Failure to receive copies of such documents *a resale certificate* shall not excuse any failure to
1064 comply with the provisions thereof *of the condominium instruments, articles of incorporation, or rules*
1065 *or regulations.*

1066 The resale certificate, once received by the owner from the unit owners' association, shall be
1067 delivered by the owner to the purchaser. The unit owners' association shall have no obligation to deliver
1068 the resale certificate to the purchaser of the unit *in accordance with the written request and instructions*
1069 *of the seller or his authorized agent, including whether the resale certificate shall be delivered*
1070 *electronically or in hard copy, and shall specify the complete contact information for the parties to*
1071 *whom the resale certificate shall be delivered.* The resale certificate shall not, in and of itself, be
1072 deemed a security within the meaning of § 13.1-501.

1073 D. The purchaser may submit a copy of the contract to the unit owners' association with a request
1074 for assurance that statements previously furnished pursuant to subsection C remain materially unchanged,
1075 or, if there have been material changes, a statement specifying such changes. The purchaser shall be
1076 provided with such assurances or such statement within ten days of the receipt of such request by the
1077 unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for
1078 the resale certificate, if any. Any fee shall reflect the actual cost incurred by the unit owners' association
1079 in providing the assurances, but shall not exceed \$0.10 per page in copying costs or a total of \$50 for
1080 all costs incurred in updating the resale certificate. The unit owners' association may also collect from
1081 the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to
1082 this subsection. In no event, however, shall the unit owners' association require reimbursement of any
1083 costs not expressly authorized in this subsection. Nor shall the unit owners' association charge any other
1084 fee for the preparation or issuance of such resale certificate or making such certificate available by
1085 electronic means except as expressly provided in this subsection.

1086 E. In the absence of a written agreement to the contrary, the failure of the unit owners' association to
1087 provide the statement required by subsection D or the disclosure by such statement that there have been
1088 one or more material changes shall render the purchase contract void at the option of the purchaser.

1089 F. The unit owners' association shall furnish the resale certificate upon the written request of any unit
1090 owner within 14 days of the receipt of such request. Payment of the actual costs of preparing the resale
1091 certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but the total
1092 fee shall not exceed \$0.10 per page in copying costs or a total of \$100, including and not in addition to,
1093 any fee charged pursuant to subsection H of ~~§ 55-79.84~~ and ~~§ 55-79.85~~, for all costs incurred in
1094 preparing the resale certificate. However, the unit owners' association may:

1095 1. Upon mutual agreement with the seller, collect for actual costs incurred, in addition to any fee
1096 charged pursuant to this subsection:

1097 a. A rush fee, not to exceed \$25, for furnishing the resale certificate within three business days from
1098 the actual receipt of the request;

1099 b. The actual cost of any mailing or delivery requested by the seller pursuant to this subsection; and

1100 c. Any actual cost incurred at the request and with the consent of the purchaser; and

1101 2. Collect a reasonable fee for preparing the resale certificate, not to exceed \$325, if the amount of
1102 the fee (i) reflects actual cost, (ii) is established in the contract between the unit owners' association and
1103 any managing agent, and (iii) is disclosed on the unit owners' association's website or the website of its
1104 managing agent. Neither the unit owners' association nor its management agent, if any, shall require cash
1105 or certified funds unless the unit owner is delinquent in any payments due to the unit owners'

1106 association in excess of 30 days or if a check of the unit owner made payable to the unit owners'
 1107 association was returned for insufficient funds within the last six months. In no event, however, shall the
 1108 unit owners' association require reimbursement of any costs not expressly authorized in this subsection.
 1109 Nor shall the unit owners' association charge any other fee for the preparation or issuance of such resale
 1110 certificate or making such certificate available by electronic means except as expressly provided in this
 1111 subsection.

1112 Except to the extent that the condominium instruments provide otherwise, any unit owners'
 1113 association authorized to charge a fee for the furnishing of a resale certificate pursuant to this subsection
 1114 shall promptly pay the fee to the managing agent where the managing agent furnishes the resale
 1115 certificate and shall assess the fee against the unit for which the certificate was prepared. The fee shall
 1116 be treated as an assessment against the unit owner's condominium unit for the purposes of § 55-79.84.
 1117 The purchaser shall not be responsible for payment of the fee. The maximum allowable amount of such
 1118 fee shall adjust annually based on the annual increases in the United States Average Consumer Price
 1119 Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the
 1120 U. S. Department of Labor.

1121 G. When a resale certificate has been issued as required by this section, the unit owners' association
 1122 shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment
 1123 account and the status of the unit with respect to any violation of the condominium instruments as of
 1124 the date of the resale certificate unless the purchaser had actual knowledge that the contents of the resale
 1125 certificate were in error.

1126 H. If the unit owners' association has been requested to furnish the resale certificate required by this
 1127 section and has been paid the appropriate fee, its failure to provide the resale certificate in substantially
 1128 the form provided herein within fourteen days from the actual receipt of the request by an officer,
 1129 director or agent of the unit owners' association shall be deemed a waiver of any claim for delinquent
 1130 assessments or of any violation of the condominium instruments, rules and regulations, or architectural
 1131 guidelines existing as of the date of the request with respect to the subject unit. The unit owners'
 1132 association shall be liable to the seller in an amount equal to the actual damages sustained by the seller
 1133 in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the
 1134 condominium instruments, rules and regulations, and architectural guidelines of the unit owners'
 1135 association as to all matters arising after the date of the settlement of the sale. The settlement agent, as
 1136 defined in § 6-1-2.20, when transmitting funds to a unit owners' association or otherwise upon request,
 1137 shall provide the unit owners' association with (i) the name of the seller, (ii) the name and address of
 1138 the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief
 1139 explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement
 1140 statement, unless otherwise prohibited, shall satisfy these requirements.

1141 *I. seller or his authorized agent may request that the resale certificate be provided in hard copy or*
 1142 *in electronic form. A unit owners' association or common interest community manager may provide the*
 1143 *resale certificate electronically; however, the seller or his authorized agent shall have the right to*
 1144 *request that the resale certificate be provided in hard copy. The seller or his authorized agent shall*
 1145 *continue to have the right to request a hard copy of the resale certificate in person at the principal*
 1146 *place of business of the unit owners' association. If the seller or his authorized agent requests that the*
 1147 *resale certificate be provided in electronic format, neither the unit owners' association nor its common*
 1148 *interest community manager may require the seller or his authorized agent to pay any fees to use the*
 1149 *provider's electronic network or system. If the seller or his authorized agent asks that the resale*
 1150 *certificate be provided in electronic format, the seller or his authorized agent may designate no more*
 1151 *than two additional recipients to receive the resale certificate in electronic format at no additional*
 1152 *charge.*

1153 E. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter,
 1154 the provisions and requirements of this section shall apply to any such resale of a condominium unit
 1155 created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

1156 J.F. The resale certificate required by this section need not be provided in the case of:

- 1157 1. A disposition of a unit by gift;
- 1158 2. A disposition of a unit pursuant to court order if the court so directs; or
- 1159 3. A disposition of a unit by foreclosure or deed in lieu of foreclosure.

1160 K.G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the
 1161 sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association
 1162 and provide the resale certificate to the purchaser.

1163 § 55-79.97:1. Fees for resale certificate.

1164 A. The unit owners' association may charge fees as authorized by this section for the inspection of
 1165 the property, the preparation and issuance of the resale certificate required § 55-79.97, and for such
 1166 other services as are set out in this section.

- 1167 B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:
1168 1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale
1169 certificate, a fee not to exceed \$100;
1170 2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150
1171 for no more than two hard copies, or (ii) electronic format, a fee not to exceed \$125, for no more than
1172 two electronic copies. Only one fee shall be charged for the preparation and delivery of the resale
1173 certificate;
1174 3. At the option of the seller or his authorized agent, with the consent of the unit owners' association
1175 or the common interest community manager, expediting the inspection, preparation, and delivery of the
1176 resale certificate, an additional expedite fee not to exceed \$50;
1177 4. At the option of the seller or his authorized agent, an additional hard copy of the resale
1178 certificate, a fee not to exceed \$25 per hard copy;
1179 5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the
1180 actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of
1181 the resale certificate; and
1182 6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of
1183 establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee
1184 not to exceed \$50.
1185 Neither the unit owners' association nor its common interest community manager shall require cash,
1186 check, certified funds, or credit card payments at the time the request for the resale certificate is made.
1187 For purposes of this section, an expedite fee shall only be charged if the inspection and preparation
1188 of delivery of the resale certificate are completed within five business days of the request for a resale
1189 certificate.
1190 C. No fees other than those specified in this section, and as limited by this section, shall be charged
1191 by the unit owners' association or its common interest community manager for compliance with the
1192 duties and responsibilities of the unit owners' association under this section. The unit owners'
1193 association or its common interest community manager shall publish and make available in paper or
1194 electronic format, or both, a schedule of the applicable fees so that the seller or his authorized agent
1195 will know such fees at the time of requesting the resale certificate.
1196 D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the
1197 sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this
1198 section. The seller shall be responsible for all costs associated with the preparation and delivery of the
1199 resale certificate, except for the costs of any resale certificate update or financial update, which costs
1200 shall be the responsibility of the requestor, payable at settlement. Neither the unit owners' association
1201 nor its common interest community manager shall require cash, check, certified funds, or credit card
1202 payments at the time the request is made for the resale certificate.
1203 E. If settlement does not occur within 90 days of the delivery of the resale certificate, or funds are
1204 not collected at settlement and disbursed to the unit owners' association or the common interest
1205 community manager, all fees, including those costs that would have otherwise been the responsibility of
1206 the purchaser or settlement agent, shall be assessed against the unit owner, shall be the personal
1207 obligation of the unit owner, and shall be an assessment against the unit and collectible as any other
1208 assessment in accordance with the provisions of the declaration and § 55-79.83. The seller may pay the
1209 unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an
1210 option offered by the unit owners' association. The unit owners' association shall pay the common
1211 interest community manager the amount due from the unit owner within 30 days after invoice.
1212 F. The maximum allowable fees charged in accordance with this section shall adjust every five years,
1213 as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the
1214 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
1215 by the Bureau of Labor Statistics of the U. S. Department of Labor.
1216 G. If a resale certificate has been issued within the preceding 12-month period, a person specified in
1217 the written instructions of the seller or his authorized agent, including the seller or his authorized agent
1218 or the purchaser or his authorized agent, may request a resale certificate update. The requestor shall
1219 specify whether the resale certificate update shall be delivered electronically or in hard copy and shall
1220 specify the complete contact information of the parties to whom the update shall be delivered. The
1221 resale certificate update shall be delivered within 10 days of the written request.
1222 H. The settlement agent may request a financial update. The requestor shall specify whether the
1223 financial update shall be delivered electronically or in hard copy and shall specify the complete contact
1224 information of the parties to whom the update shall be delivered. The financial update shall be delivered
1225 within three business days of the written request.
1226 I. A reasonable fee for the resale certificate update or financial update may be charged by the
1227 preparer, not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may
1228 request that the unit owners' association or the common interest community manager perform an

1229 *additional inspection of the unit, as authorized in the declaration, for a fee not to exceed \$100. Any fees*
 1230 *charged for the specified update shall be collected at the time settlement occurs on the sale of the*
 1231 *property. Neither the unit owners' association nor its common interest community manager, if any, shall*
 1232 *require cash, check, certified funds, or credit card payments at the time the request is made for the*
 1233 *resale certificate update. The requestor may request that the specified update be provided in hard copy*
 1234 *or in electronic form.*

1235 *J. No unit owners' association or common interest community manager may require the requestor to*
 1236 *request the specified update electronically. The seller or his authorized agent shall continue to have the*
 1237 *right to request a hard copy of the specified update in person at the principal place of business of the*
 1238 *unit owners' association. If the requestor asks that the specified update be provided in electronic format,*
 1239 *neither the unit owners' association nor its common interest community manager may require the*
 1240 *requester to pay any fees to use the provider's electronic network or system. A copy of the specified*
 1241 *update shall be provided to the seller or his authorized agent.*

1242 *K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners'*
 1243 *association shall, as to the purchaser, be bound by the statements set forth therein as to the status of*
 1244 *the assessment account and the status of the unit with respect to any violation of the condominium*
 1245 *instruments as of the date of the statement unless the purchaser had actual knowledge that the contents*
 1246 *of the resale certificate were in error.*

1247 *L. If the unit owners' association or its common interest community manager has been requested in*
 1248 *writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate*
 1249 *substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent*
 1250 *assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural*
 1251 *guidelines existing as of the date of the request with respect to the subject unit. The preparer of the*
 1252 *resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the*
 1253 *seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the*
 1254 *condominium instruments, rules and regulations, and architectural guidelines of the unit owners'*
 1255 *association as to all matters arising after the date of the settlement of the sale.*

1256 *§ 55-79.97:2. Properties subject to more than one declaration.*

1257 *If the unit is subject to more than one declaration, the unit owners' association or its common*
 1258 *interest community manager may charge the fee authorized by § 55-79.97:1 for each of the applicable*
 1259 *associations, provided however, that no association may charge an inspection fee unless the association*
 1260 *has architectural control over the unit.*

1261 *§55-79.97:3. Requests by settlement agents.*

1262 *A. The settlement agent may request a financial update from the preparer of the resale certificate.*
 1263 *The preparer of the resale certificate shall, upon request from the settlement agent, provide the*
 1264 *settlement agent with written escrow instructions directing the amount of any funds to be paid from the*
 1265 *settlement proceeds to the association or the common interest community manager. There shall be no*
 1266 *fees charged for a response by the association or its common interest community manager to a request*
 1267 *from the settlement agent for written escrow instructions; however a fee may be charged for a financial*
 1268 *update pursuant to this chapter.*

1269 *B. The settlement agent, when transmitting funds to the unit owners' association or the common*
 1270 *interest community manager, shall, unless otherwise directed in writing, provide the preparer of the*
 1271 *resale certificate with (i) the complete record names of the seller, (ii) the address of the subject unit,*
 1272 *(iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the*
 1273 *application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise*
 1274 *prohibited.*

1275 *§ 55-362. Definitions.*

1276 *When used in this chapter, or in a time-share instrument, unless the context requires a different*
 1277 *meaning:*

1278 *"Additional land" has the meaning ascribed to it in subsection C of § 55-367;*

1279 *"Alternative purchase" means anything valued in excess of \$100 which is offered to a potential*
 1280 *purchaser by the developer during the developer's sales presentation and which is purchased by such*
 1281 *potential purchaser for more than \$100, even though the purchaser did not purchase a time-share. An*
 1282 *alternative purchase is not a time-share. A membership camping contract as defined in § 59.1-313 is not*
 1283 *an alternative purchase. An alternative purchase shall be registered with the Board unless it is otherwise*
 1284 *registered as a travel service under the Virginia Travel Club Act (§ 59-445 et seq.), and shall include,*
 1285 *without limitation, vacation packages (howsoever denominated) and exit programs (howsoever*
 1286 *denominated);*

1287 *"Association" means the association organized under the provisions of § 55-368;*

1288 *"Board" means the Real Estate Common Interest Community Board, an agency within the meaning of*
 1289 *the Administrative Process Act (§ 2.2-4000 et seq.);*

1290 "Board of directors" means an executive and administrative entity, by whatever name denominated,
1291 designated in a time-share estate project instrument as the governing body of the time-share estate
1292 owners' association;

1293 "Common elements" means the real estate, improvements thereon, and the personalty situate within
1294 the time-share project that are subject to the time-share program. "Common elements" shall not include
1295 the units and the time-shares;

1296 "Consumer documents" means the aggregate of the following documents: the reverter deed, note, and
1297 the deed of trust. A consumer document shall be deemed one of the consumer documents;

1298 "Contract," "sales contract," "purchase contract," "contract of purchase" or "contract to purchase"
1299 shall be interchangeable throughout this chapter and shall mean any legally binding instrument executed
1300 by the developer and a purchaser whereby the developer is obligated to sell and the purchaser is
1301 obligated to purchase either a time-share and its incidental benefits or an alternative purchase registered
1302 under this chapter;

1303 "Conversion time-share project" means a real estate improvement, which prior to the disposition of
1304 any time-share, was wholly or partially occupied by persons as their permanent residence or on a
1305 transient pay-as-you-go basis other than those who have contracted for the purchase of a time-share and
1306 those who occupy with the consent of such purchasers;

1307 "Deed" means the instrument by which title to a time-share estate is transferred from one person to
1308 another person;

1309 "Deed of trust" means the instrument conveying the time-share estate that is given as security for the
1310 payment of the note;

1311 "Default" means either a failure to have made any payment in full and on time or a violation of a
1312 performance obligation required by a consumer document for a period of no less than 60 days;

1313 "Developer" means any person or group of persons acting in concert who (i) offers to dispose of a
1314 time-share or its or their interest in a time-share unit for which there has not been a previous disposition
1315 or (ii) applies for registration of the time-share program;

1316 "Developer control period" has the meaning ascribed to it in § 55-369;

1317 "Development right" means any right reserved by the developer to create additional units which may
1318 be dedicated to the time-share program;

1319 "Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other than
1320 a transfer or release of security for a debt;

1321 "Exchange agent" or "exchange company" means a person or persons who exchange or offer to
1322 exchange time-shares in an exchange program with other time-shares;

1323 "Exchange program" means any opportunity or procedure for the assignment or exchange of
1324 time-shares among owners in other time-share programs as evidenced by a past or present written
1325 agreement executed between an exchange company and the developer or the time-share estate
1326 association; however, an "exchange program" shall not be either an incidental benefit or an opportunity
1327 or procedure whereby a time-share owner can exchange his time-share for another time-share within
1328 either the same time-share or another time-share project owned in part by the developer;

1329 "Guest" means a person who is on the project, additional land or development at the request of an
1330 owner, developer, association or managing agent, or a person otherwise legally entitled to be thereon. A
1331 guest includes, without limitation, family members of owners, time-share exchange participants,
1332 merchants, purveyors, vendors and employees thereof, and of the developer and association.

1333 "Incidental benefit" means anything valued in excess of \$100 provided by the developer that is
1334 acquired by a purchaser upon acquisition of a time-share and includes without limitation exchange
1335 rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral awards, and golf and
1336 tennis packages. An incidental benefit is not a time-share or an exchange program. An incidental benefit
1337 shall not be registered with the Board;

1338 "Inherent risks of project activity" mean those dangers or conditions that are an integral part of a
1339 project activity, including certain hazards, such as surface and subsurface conditions; natural conditions
1340 of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of
1341 structures or equipment ordinarily used in association or time-share operations. Inherent risks of project
1342 activity also include the potential of a participant to act in a negligent manner that may contribute to
1343 injury to the participant or others, including failing to follow instructions given by the project
1344 professional or failing to exercise reasonable caution while engaging in the project activity.

1345 "Lien holder" means either a person who holds an interest in an encumbrance that is not released of
1346 record as to a purchaser or such person's successor in interest who acquires title to the time-share project
1347 at foreclosure or by deed in lieu of foreclosure, or other instrument however denominated;

1348 "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the
1349 management of a time-share project;

1350 "Managing entity" means the managing agent or, if there is no managing agent, the time-share
1351 owners' association in a time-share estate project and the developer in a time-share use project;

1352 "Material change" means a change in any information or document disclosed in or attached to the
1353 public offering statement which renders inaccurate, incomplete or misleading any information or
1354 document in such a way as to affect substantially a purchaser's rights or obligations, but shall not
1355 include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance
1356 fees, association dues, assessments, special assessments or any recurring time-share expense item
1357 provided the change is made known (a) immediately to the prospective purchaser by a written addendum
1358 in the public offering statement and (b) to the Board by filing with the developer's annual report copies
1359 of the updated changes occurring over the immediately preceding 12 months; (ii) which is an aspect or
1360 result of the orderly development of the time-share project in accordance with the time-share instrument;
1361 (iii) resulting from new, updated, or amended information contained in the annual report prepared and
1362 distributed pursuant to § 55-370.1; (iv) correcting spelling, grammar, omissions or other similar errors
1363 not affecting the substance of the public offering statement; or (v) occurring in the issuance of an
1364 exchange company's updated annual report or disclosure document, provided upon its receipt by the
1365 developer, it shall be distributed in lieu of all others in order to satisfy § 55-374;

1366 "Note" means the instrument that evidences the debt occasioned by the deferred purchase of a
1367 time-share;

1368 "Offering" or "offer" means any act to sell, solicit, induce, or advertise, which originates in this
1369 Commonwealth, whether by radio, television, telephone, newspaper, magazine, or mail, whereby a
1370 person is given an opportunity to acquire a time-share;

1371 "Participant" means any person, other than a project professional, who engages in a project activity.

1372 "Person" means one or more natural persons, corporations, partnerships, associations, trustees of a
1373 trust, limited liability companies, other entities, or any combination thereof capable of holding title to
1374 real property;

1375 "Possibility of reverter" means a provision contained in a reverter deed whereby the time-share estate
1376 automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by
1377 § 55-376.1;

1378 "Product" means each time-share and its incidental benefits and all alternative purchases that are
1379 registered with the Board pursuant to this chapter;

1380 "Project" means the same as the term "time-share project";

1381 "Project activity" means any activity carried out or conducted on a common element, within a
1382 time-share unit or elsewhere in the project, additional land or development, that allows owners, their
1383 guests, and members of the general public to view, observe, participate or enjoy activities, including
1384 swimming pools, spas, sporting venues, and cultural, historical or harvest-your-own activities, other
1385 amenities and events, or natural activities and attractions for recreational, entertainment, educational or
1386 social purposes. An activity is a project activity whether or not the participant paid to participate in the
1387 activity.

1388 "Project instrument" means any recorded documents, by whatever name denominated, which create
1389 the time-share project and program and which may contain restrictions or covenants regulating the use,
1390 occupancy, or disposition of time-shares in a project;

1391 "Project professional" means any person who is engaged in the business of providing one or more
1392 project activities, whether or not for compensation. For the purposes of this definition, the developer,
1393 association, and managing entity shall each be deemed a project professional.

1394 "Public offering statement" means the statement required by § 55-374;

1395 "Purchaser" means any person other than a developer or lender who owns or acquires a product, or
1396 who otherwise enters into a contract for the purchase of a product;

1397 "Reverter deed" means the deed from developer to a grantee that contains a possibility of reverter;

1398 "Sales person" means a person who sells or offers to sell time-share interests in a time-share
1399 program;

1400 "Situs" means the place outside the Commonwealth where a developer's time-share project is located;

1401 "Situs Time-Share Act" means the Act, howsoever denominated, that regulates the offering,
1402 disposition, and sale of time-shares applicable to the property outside the Commonwealth where the
1403 time-share project is located;

1404 "Time-share" means either a time-share estate or a time-share use plus its incidental benefits;

1405 "Time-share estate" means a right to occupy a unit or any of several units during five or more
1406 separated time periods over a period of at least five years, including renewal options, coupled with a
1407 freehold estate or an estate for years in a time-share project or a specified portion thereof;

1408 "Time-share estate occupancy expense" has the meaning ascribed to it in § 55-369;

1409 "Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof to
1410 occupy units not more than four weeks in any one year period; and (ii) for which the down payment is
1411 not more than 20 percent of the total purchase price of the time-share estate;

1412 "Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with respect to the

1413 operation, maintenance, administration or insuring of the time-shares, units, and common elements
 1414 comprising the entire time-share project, whether or not incurred for the repair, renovation, upgrade,
 1415 refurbishing or capital improvements; and (ii) any allocations of reserves;

1416 "Time-share instrument" means any document, however denominated, which creates the time-share
 1417 project and program, and which may contain restrictions or covenants regulating the use, occupancy, or
 1418 disposition of time-shares in a project;

1419 "Time-share owner" or "owner" means a person who is an owner or co-owner of a time-share other
 1420 than as security for an obligation;

1421 "Time-share program" or "program" means any arrangement of time-shares in one or more time-share
 1422 projects whereby the use, occupancy, or possession of real property has been made subject to either a
 1423 time-share estate or time-share use in which such use, occupancy, or possession circulates among owners
 1424 of the time-shares according to a fixed or floating time schedule on a periodic basis occurring over any
 1425 period of time in excess of five years;

1426 "Time-share project" means all of the real property subject to a time-share program created by the
 1427 execution of a time-share instrument;

1428 "Time-share use" means a right to occupy a time-share unit or any of several time-share units during
 1429 five or more separated time periods over a period of at least five years, including renewal options, not
 1430 coupled with a freehold estate or an estate for years in a time-share project or a specified portion
 1431 thereof. "Time-share use" shall not mean a right to use which is subject to a first-come, first-served,
 1432 space-available basis as might exist in a country club, motel, hotel, health spa, campground, or
 1433 membership or resort facility;

1434 "Time-share unit" or "unit" means the real property or real property improvement in a project which
 1435 is divided into time-shares and designated for separate occupancy and use.

1436 § 55-362.1. Administrative agency.

1437 This chapter shall be administered by the ~~Real Estate~~ *Common Interest Community* Board, which is
 1438 herein called the "Board."

1439 § 55-374.1. Certain advertising practices regulated.

1440 A. Any offering which includes a gift or prize must disclose therein, with the same prominence as
 1441 such offer:

1442 1. The retail value of each gift or prize;

1443 2. The approximate odds against any given person obtaining each gift or prize if all persons to whom
 1444 the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;

1445 3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or
 1446 prizes to be awarded or in lieu thereof, the nature of such limitation;

1447 4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective
 1448 purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend
 1449 a sales presentation in order to receive the gift or prize;

1450 5. The date upon which the offer expires; and

1451 6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of
 1452 a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership,
 1453 vacation ownership interest or product, as appropriate.

1454 B. Any gift or prize offered in connection with an offering shall be delivered to the prospective
 1455 purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the
 1456 day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply
 1457 of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective
 1458 purchaser a written, unconditional promise to deliver such gift or prize no later than thirty days from the
 1459 date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of
 1460 equal or greater value.

1461 C. The offering or sale of any product registered with the Board is exempt from the Virginia Travel
 1462 Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia
 1463 Securities Act (§ 13.1-501 et seq.), the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), the
 1464 Subdivided Land Sales Act (§ 55-336 et seq.), and the Wet Settlement Act (§ 6.1-2.10 et seq.); ~~if any~~
 1465 ~~provision of this section is in conflict with the provisions in, and~~ the Prizes and Gifts Act (§ 59.1-415 et
 1466 seq.); the provisions of the Prizes and Gifts Act shall control.

1467 § 55-374.2. Exchange programs.

1468 A. Any exchange company which offers an exchange program in the Commonwealth shall prepare
 1469 and register with the Board a disclosure document including, but not limited to, the following:

1470 1. The name and address of the exchange company;

1471 2. The names and addresses of the top three officers, all directors, and, if the exchange company is
 1472 privately held, all shareholders owning five percent or more interest in the exchange company;

1473 3. Whether the exchange company or any of its officers or directors has any legal or beneficial
 1474 interest in any developer or managing agent for any time-share program participating in the exchange

1475 program and, if so, the name and location of the time-share project and the nature of the interest;
1476 4. Unless the exchange company is also the developer or an affiliate, a statement that the purchaser's
1477 contract with the exchange company is a contract separate and distinct from the sales contract;
1478 5. Whether the purchaser's participation in the exchange program is dependent upon the continued
1479 affiliation of the time-share project with the exchange program;
1480 6. Whether the purchaser's membership or participation, or both, in the exchange program is
1481 voluntary or mandatory;
1482 7. A complete and accurate description of the terms and conditions of the purchaser's contractual
1483 relationship with the exchange company and the procedure by which changes in the terms and
1484 conditions of the exchange contract may be made;
1485 8. A complete and accurate description of the procedure to qualify for and effectuate exchanges;
1486 9. A complete and accurate description of all limitations, restrictions, or priorities employed in the
1487 operation of the exchange program including, but not limited to, limitations on exchanges based on
1488 seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such
1489 limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear
1490 description of the manner in which they are applied;
1491 10. Whether exchanges are arranged on a space available basis and whether any guarantees of
1492 fulfillment of specific requests for exchanges are made by the exchange program;
1493 11. Whether and under what circumstances an owner, in dealing with the exchange company, may
1494 lose the use of occupancy of his time-share in any properly applied for exchange, without being
1495 provided with substitute accommodations by the exchange company;
1496 12. The fees or range of fees for participation by owners in the exchange program, a statement of
1497 whether any such fees may be altered by the exchange company, and the circumstances under which
1498 alterations may be made;
1499 13. The name and address of the site of each time-share property, accommodation or facility
1500 participating in the exchange program;
1501 14. The number of units in each property participating in the exchange program which are available
1502 for occupancy and which qualify for participation in the exchange program, expressed within the
1503 following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;
1504 15. The number of owners with respect to each time-share program or other property who are
1505 eligible to participate in the exchange program, expressed within the following numerical groupings:
1506 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine
1507 those owners currently eligible to participate in the exchange program;
1508 16. The disposition made by the exchange company of time-shares deposited with the exchange
1509 program by owners eligible to participate in the exchange program and not used by the exchange
1510 company in effecting exchanges;
1511 17. The following information, which, except as provided in subsection B of this section, shall be
1512 independently audited by a certified public accountant or accounting firm in accordance with the
1513 standards of the Accounting Standards Board of the American Institute of Certified Public Accountants
1514 and reported for each year no later than July 1 of the succeeding year, beginning no later than July 1,
1515 1985:
1516 a. The number of owners enrolled in the exchange program. Such numbers shall disclose the
1517 relationship between the exchange company and owners as being either fee paying or gratuitous in
1518 nature;
1519 b. The number of time-share properties, accommodations or facilities eligible to participate in the
1520 exchange program;
1521 c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the
1522 exchange company divided by the number of exchanges properly applied for, together with a complete
1523 and accurate statement of the criteria used to determine whether an exchange request was properly
1524 applied for;
1525 d. The number of time-shares for which the exchange company has an outstanding obligation to
1526 provide an exchange to an owner who relinquished a time-share during the year in exchange for a
1527 time-share in any future year;
1528 e. The number of exchanges confirmed by the exchange company during the year;
1529 18. A statement in boldfaced type to the effect that the percentage described in subdivision 17 c of
1530 this subsection is a summary of the exchange requests entered with the exchange company in the period
1531 reported and that the percentage does not indicate a purchaser's or owner's probabilities of being
1532 confirmed to any specific choice or range of choices, since availability at individual locations may vary.
1533 B. The information required by subsection A shall be accurate as of a date which is no more than
1534 thirty days prior to the date on which the information is delivered to the purchaser, except that the
1535 information required by subsection A, subdivisions 2, 12, 13, 14, 15 and 16 shall be accurate as of

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1536 December 31 of the preceding year if the information is delivered between July 1 and December 31 of
1537 any year; information delivered between January 1 and June 30 of any year shall be accurate as of
1538 December 31 of the year prior to the preceding year. At no time shall such information be accurate as
1539 of a date which is more than eighteen months prior to the date of delivery. All references in this section
1540 to the word "year" shall mean calendar year.

1541 C. In the event an exchange company offers an exchange program directly to the purchaser, the
1542 exchange company shall deliver to such purchaser, simultaneously with such offering and prior to the
1543 execution of any contract between the purchaser and the exchange company, the information set forth in
1544 subsection A, above. The requirements of this subsection shall not apply to any renewal of a contract
1545 between a purchaser and an exchange company.

1546 D. Each exchange company must include the statement set forth in subdivision 18 of subsection A
1547 on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the
1548 exchange company which also contain the percentage of confirmed exchanges described in subdivision
1549 17 c of subsection A.

1550 E. An exchange company shall, on or before July 1 of each year, file with the Board and the
1551 association for the time-share program in which the time-shares are offered or disposed, the information
1552 required by this section with respect to the preceding year. If the Board determines that any of the
1553 information supplied fails to meet the requirements of this section, the Board may undertake
1554 enforcement action against the exchange company in accordance with the provisions of Article 6
1555 (§ 55-396 et seq.) of this chapter. No developer shall have any liability arising out of the use, delivery
1556 or publication by the developer of written information provided to it by the exchange company pursuant
1557 to this section. Except for written information provided to the developer by the exchange company, no
1558 exchange company shall have any liability with respect to (i) any representation made by the developer
1559 relating to the exchange program or exchange company, or (ii) the use, delivery or publication by the
1560 developer of any information relating to the exchange program or exchange company. The failure of the
1561 exchange company to observe the requirements of this section, or the use by it of any unfair or
1562 deceptive act or practice in connection with the operation of the exchange program, shall be a violation
1563 of this section.

1564 F. The Board may establish by regulation reasonable fees for registration of the exchange company
1565 disclosure document. All fees shall be remitted by the Board to the Treasurer of the Commonwealth,
1566 and shall be placed to the credit of the ~~special fund of the Real Estate Board Common Interest~~
1567 *Community Management Information Fund established pursuant to § 55-529.*

1568 § 55-375. Escrow of deposits.

1569 A. Any deposit made in connection with the purchase or reservation of a product shall be held in
1570 escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that
1571 purpose.

1572 Such escrow account shall be insured by an instrumentality of the federal government and located in
1573 Virginia. All deposits shall be held in escrow until (i) delivered to the developer upon expiration of the
1574 purchaser's cancellation period provided the purchaser's right of cancellation has not been exercised, (ii)
1575 delivered to the developer because of the purchaser's default under a contract to purchase a time-share,
1576 or (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the deposits as
1577 required by this section is prima facie evidence of willful violation of this section.

1578 B. The developer shall disclose in the contract or in the public offering that the deposit may not be
1579 held in escrow after expiration of the cancellation period and that such deposit is not protected as an
1580 escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or
1581 not the developer reserves the option to sell or assign any promissory note given by a purchaser to
1582 another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear
1583 in boldfaced type of a minimum size of ten points.

1584 C. There shall be filed with the ~~Real Estate Common Interest Community~~ Board a bond, letter of
1585 credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection A, in favor of
1586 the time-share purchasers. The bond, letter of credit, or cash shall be in an amount equal to the total of
1587 the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond, letter of credit, or
1588 cash shall be maintained for so long as the developer offers time-shares in the project. The bond shall
1589 be with a surety company authorized to do business in Virginia.

1590 § 55-392.1. Filing fee.

1591 The Board may by regulation establish reasonable fees for registration. Until such regulations are
1592 adopted by the Board, the fee shall be in an amount equal to \$1 per time-share, except that the initial
1593 application fee shall not be less than \$500 nor more than \$1,500, and the fee for any application for
1594 registration of additional units shall be not less than \$200. All fees shall be remitted by the Board to the
1595 Treasurer of the Commonwealth, and shall be placed to the credit of the ~~special fund of the Real Estate~~
1596 *Board Common Interest Community Management Information Fund established pursuant to § 55-529.*

1597 § 55-484. Resales of cooperative interests.

1598 A. Except in the case of a sale where delivery of a public offering statement is required, or unless
 1599 exempt under subsection B of § 55-476, a proprietary lessee shall furnish to a purchaser before
 1600 execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a copy of
 1601 the declaration, the bylaws, the rules or regulations of the association and a certificate containing:

1602 1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other
 1603 restraint on the free alienability of the cooperative interest;

1604 2. A statement setting forth the amount of the monthly common expense assessment and any unpaid
 1605 common expense or special assessment currently due and payable from the selling proprietary lessee;

1606 3. A statement of any other fees payable by proprietary lessees;

1607 4. A statement of any capital expenditures anticipated by the association for the current and next two
 1608 succeeding fiscal years;

1609 5. The current reserve study report or a summary thereof and a statement of the status and amount of
 1610 any reserve or replacement fund and of any portions of those reserves designated by the association for
 1611 any specified projects;

1612 6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the
 1613 association, including the amount of any debt owed by the association or to be assumed by the
 1614 association, inclusive of principal and any accrued interest, loan fees and other similar charges;

1615 7. The current operating budget of the association;

1616 8. A statement of any unsatisfied judgments against the association and the status of any pending
 1617 suits in which the association is a defendant;

1618 9. A statement describing any insurance coverage provided for the benefit of proprietary lessees;

1619 10. A statement as to whether the executive board has knowledge that any alterations or
 1620 improvements to the unit or to the limited common elements assigned thereto violate any provision of
 1621 the declaration;

1622 11. A statement as to whether the executive board has knowledge of any violations of the health or
 1623 building codes with respect to the unit, the limited common elements assigned thereto or any other
 1624 portion of the cooperative;

1625 12. A statement of the remaining term of any leasehold estate affecting the cooperative and the
 1626 provisions governing any extension or renewal thereof;

1627 13. Except where no public offering statement was prepared, a statement that the public offering
 1628 statement and any amendments thereto are records of the association available for inspection by the
 1629 purchaser;

1630 14. An accountant's statement, if any was prepared, as to the deductibility for federal income taxes
 1631 purposes by the proprietary lessee of real estate taxes and interest paid by the association;

1632 15. A statement of any restrictions in the declaration affecting the amount that may be received by a
 1633 proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on termination of the
 1634 cooperative; and

1635 16. Certification, if applicable, that the proprietary lessees' association has filed with the ~~Real Estate~~
 1636 *Common Interest Community Board* the annual report required by § 55-504.1; which certification shall
 1637 indicate the filing number assigned by the ~~Real Estate Common Interest Community Board~~ and the
 1638 expiration date of such filing.

1639 B. The association, within 10 days after a request by a proprietary lessee, shall furnish a certificate
 1640 containing the information necessary to enable the proprietary lessee to comply with this section. A
 1641 proprietary lessee providing a certificate pursuant to subsection A is not liable to the purchaser for any
 1642 erroneous information provided by the association and included in the certificate.

1643 C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the
 1644 certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or
 1645 delay of the association to provide the certificate in a timely manner, but the purchase contract is
 1646 voidable by the purchaser until the certificate has been provided and for five days thereafter or until
 1647 conveyance, whichever first occurs.

1648 § 55-487. Conversion buildings.

1649 A. A declarant of a cooperative containing conversion buildings shall give each of the tenants of a
 1650 conversion building formal notice of the conversion at the time the cooperative is registered by the
 1651 agency. This notice shall advise each tenant of (i) the offering price of the cooperative interests for the
 1652 unit he occupies, (ii) the projected common expense assessments against that cooperative interest for at
 1653 least the first year of the cooperative's operation, (iii) any relocation services, public or private, of which
 1654 the declarant is aware, (iv) any measure taken or to be taken by the declarant to reduce the incidence of
 1655 tenant dislocation, and (v) the details of the relocation plan, if any is provided by the declarant, to assist
 1656 tenants in relocating. No tenant or subtenant may be required to vacate upon less than 120 days' notice,
 1657 except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment
 1658 of the premises, and the terms of the tenancy may not be altered during that period. Until the expiration

1659 of the 120-day period, the declarant shall have no right of access to the unit except as provided herein
1660 and in subsection A of § 55-248.18 and except that, upon 45 days' written notice to the tenant, the
1661 declarant may enter the unit in order to make additional repairs, decorations, alterations or
1662 improvements, provided (i) the making of the same does not constitute an actual or constructive eviction
1663 of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the
1664 tenant is absent from the unit. Failure to give notice as required by this section is a defense to an action
1665 for possession. The declarant shall also provide general notice to the tenants of the cooperative or
1666 proposed cooperative at the time of application to the agency, in addition to the formal notice required
1667 by this subsection.

1668 B. For sixty days after delivery or mailing of the formal notice described in subsection A, the person
1669 required to give the notice shall offer to convey the cooperative interest for each unit or proposed unit
1670 occupied for residential use to the tenant who leases the unit associated with that cooperative interest. A
1671 specific statement of the purchase price and the amount of any initial or special cooperative fee due
1672 from the purchaser on or before settlement of the purchase contract and the basis of such fee shall be
1673 given to the tenant. If a tenant fails to purchase the cooperative interest during that 60-day period, the
1674 offeror may not offer to dispose of an interest in that cooperative interest during the following 180 days
1675 at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This
1676 subsection does not apply to any cooperative interest in a conversion building if the unit which is part
1677 of that cooperative interest will be restricted exclusively to nonresidential use or the boundaries of the
1678 converted unit do not substantially conform to the dimensions of the residential unit before conversion.

1679 C. If a seller, in violation of subsection B, conveys a cooperative interest to a purchaser for value
1680 who has no knowledge of the violation, that conveyance extinguishes any right a tenant may have under
1681 subsection B to purchase that cooperative interest if the deed states that the seller has complied with
1682 subsection B, but does not affect the right of a tenant to recover damages from the seller for a violation
1683 of subsection B.

1684 D. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and
1685 otherwise complies with the provisions of §§ 55-248.6 and 55-248.15, the notice also constitutes a notice
1686 to vacate as specified by §§ 55-222, 55-248.6 and 55-248.15. The details of the relocation plan, if any is
1687 provided by the declarant for assisting tenants in relocating, shall also be provided to the tenant.

1688 E. Any county, city or town may require by ordinance that the declarant of a conversion cooperative
1689 file with that governing body all information which is required by the agency pursuant to § 55-498 and
1690 a copy of the formal notice required by subsection A. Such information shall be filed with that
1691 governing body when the application for registration is filed with the agency, and such copy of the
1692 formal notice shall be filed with that governing body whenever it is sent to tenants. No fee shall be
1693 imposed for such filings with a governing body.

1694 F. The governing body of any county utilizing the urban county executive form of optional
1695 government (§§ 15.2-800 through 15.2-858) or the county manager plan of optional government
1696 (§§ 15.2-702 through 15.2-749), or of any city or town adjoining any such county, may require by
1697 ordinance that the declarant of any residential cooperative containing conversion buildings converted
1698 from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually
1699 expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed
1700 the amount to which the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if
1701 the real estate comprising the condominium had been condemned by the Department of Highways and
1702 Transportation.

1703 G. Any county, city or town may require by ordinance that elderly or disabled tenants, occupying as
1704 their residence up to twenty percent of the apartments or units in a cooperative containing conversion
1705 buildings at the time of issuance of the general notice required by subsection A hereof, be offered leases
1706 or extensions of leases on the apartments or units they occupy or on other apartments or units of at least
1707 equal size and overall quality for up to three years beyond the date of such notice.

1708 The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided that
1709 the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments
1710 or units in the same market area as such conversion building.

1711 Such leases or extensions shall not be required, however, in the case of any apartments or units
1712 which will, in the course of the conversion, be substantially altered in physical layout, restricted
1713 exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant
1714 in premises outside of the project being converted.

1715 H. For the purposes of this section:

1716 "Agency" means the ~~Real Estate~~ *Common Interest Community* Board.

1717 "Elderly" means not less than sixty-two years of age.

1718 "Disabled" means suffering from a severe, chronic physical or mental impairment which results in
1719 substantial functional limitations.

1720 I. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

1721 § 55-496. Administrative agency.

1722 This chapter shall be administered by the ~~Real Estate Common Interest Community~~ Board, which
1723 herein is called the "agency."

1724 § 55-504.1. Annual report by associations.

1725 A. The association shall file an annual report in a form and at such time as prescribed by regulations
1726 of the agency. The filing of the annual report required by this section shall commence upon the
1727 termination of any declarant control period reserved pursuant to § 55-460.

1728 B. The agency may accept copies of forms submitted to other state agencies to satisfy the
1729 requirements of this section if such forms contain substantially the same information required by the
1730 agency.

1731 C. The annual report shall be accompanied by a fixed fee in an amount established by the agency;
1732 ~~All fees shall be, together with an annual assessment in an amount equal to the lesser of \$1,000 (or~~
1733 ~~such other amount as the agency may establish by regulation) or 0.02 percent of the association's gross~~
1734 ~~assessment income during the preceding calendar year to be remitted to the State Treasurer and shall be~~
1735 placed to the credit of the Common Interest Community Management Fund established pursuant to
1736 § 55-529.

1737 Article 1.

1738 General Provisions.

1739 § 55-508. Applicability.

1740 A. This chapter shall apply to developments subject to a declaration, as defined herein, initially
1741 recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all
1742 subdivisions created under the former Subdivided Land Sales Act (§ 55-336 et seq.). For the purposes of
1743 this chapter, as used in the former Subdivided Land Sales Act, the terms:

1744 "Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and
1745 control of a development shall be deemed to correspond with the term "declaration";

1746 "Developer" shall be deemed to correspond with the term "declarant";

1747 "Lot" shall be deemed to correspond with the term "lot"; and

1748 "Subdivision" shall be deemed to correspond with the term "development."

1749 This chapter shall be deemed to supersede the *former* Subdivided Land Sales Act (§ 55-336 et seq.),
1750 and no development shall be established under the latter on or after July 1, 1998. This chapter shall not
1751 be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998;
1752 however, any development established prior to the enactment of the *former* Subdivided Land Sales Act
1753 may specifically provide for the applicability of the provisions of this chapter.

1754 This chapter shall not be construed to affect the validity of any provision of any prior declaration;
1755 however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot
1756 in a development is subject to the provisions of this chapter, all lots in the development shall be subject
1757 to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded
1758 from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may
1759 specifically provide for the applicability of the provisions of this chapter. The granting of rights in this
1760 chapter shall not be construed to imply that such rights did not exist with respect to any development
1761 created in the Commonwealth before July 1, 1989.

1762 B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any
1763 association governing, or (iii) relationship of a member to any association governing condominiums
1764 created pursuant to the Condominium Act (§ 55-79.39 et seq.), cooperatives created pursuant to the
1765 Virginia Real Estate Cooperative Act (§ 55-424 et seq.), time-shares created pursuant to the Virginia
1766 Real Estate Time-Share Act (§ 55-360 et seq.), or membership campgrounds created pursuant to the
1767 Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock,
1768 nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes
1769 available golf, ski and other recreational facilities both to its members and the general public.

1770 § 55-509. Definitions.

1771 As used in this chapter, unless the context requires a different meaning:

1772 "Act" means the Virginia Property Owners' Association Act.

1773 "Association" means the property owners' association.

1774 "Board of directors" means the executive body of a property owners' association, or a committee
1775 which is exercising the power of the executive body by resolution or bylaw.

1776 "Capital components" means those items, whether or not a part of the common area, for which the
1777 association has the obligation for repair, replacement or restoration and for which the board of directors
1778 determines funding is necessary.

1779 "Common area" means property within a development which is owned, leased or required by the
1780 declaration to be maintained or operated by a property owners' association for the use of its members
1781 and designated as common area in the declaration.

- 1782 *"Common interest community" means the same as that term is defined in § 55-528.*
- 1783 *"Common interest community manager" means the same as that term is defined in § 54.1-2345.*
- 1784 *"Declarant" means the person or entity signing the declaration and its successors or assigns who may*
1785 *submit property to a declaration.*
- 1786 *"Declaration" means any instrument, however denominated, recorded among the land records of the*
1787 *county or city in which the development or any part thereof is located, that either (i) imposes on the*
1788 *association maintenance or operational responsibilities for the common area or (ii) creates the authority*
1789 *in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity*
1790 *any mandatory payment of money in connection with the provision of maintenance and/or services for*
1791 *the benefit of some or all of the lots, the owners or occupants of the lots, or the common area.*
- 1792 *"Declaration" includes any amendment or supplement to the instruments described in this definition.*
- 1793 *"Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share*
1794 *project or campground.*
- 1795 *"Development" means real property located within this Commonwealth subject to a declaration which*
1796 *contains both lots, at least some of which are residential or are occupied for recreational purposes, and*
1797 *common areas with respect to which any person, by virtue of ownership of a lot, is a member of an*
1798 *association and is obligated to pay assessments provided for in a declaration.*
- 1799 *"Disclosure packet update" means an update of the financial information referenced in subdivisions*
1800 *A 2 through A 9 of § 55-509.5. The update shall include a copy of the original disclosure packet.*
- 1801 *"Financial update" means an update of the financial information referenced in subdivisions A 2*
1802 *through A 7 of § 55-509.5.*
- 1803 *"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on*
1804 *a recorded subdivision plat for a development or the boundaries of which are described in the*
1805 *declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other*
1806 *than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative*
1807 *if the condominium or cooperative is a part of a development.*
- 1808 *"Meeting" or "meetings" means the formal gathering of the board of directors where the business of*
1809 *the association is discussed or transacted.*
- 1810 *"Property owners' association" or "association" means an incorporated or unincorporated entity upon*
1811 *which responsibilities are imposed and to which authority is granted in the declaration.*
- 1812 *"Settlement agent" means the same as that term is defined in § 6.1-2.20.*
- 1813 *§ 55-509.2. Documents to be provided by declarant upon transfer of control.*
- 1814 *Unless previously provided to the board of directors of the association, once the majority of the*
1815 *members of the board of directors are owners of improved lots in the association and the declarant no*
1816 *longer holds a majority of the votes in the association, the declarant shall provide to the board of*
1817 *directors or its designated agent the following: (i) all association books and records held by or controlled*
1818 *by the declarant, including without limitation, minute books and rules and regulations and all*
1819 *amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures*
1820 *from the date of the recording of the association documents to the end of the regular accounting period*
1821 *immediately succeeding the first election of the board of directors by the home owners, not to exceed*
1822 *sixty days after the date of the election, such statement being prepared in an accurate and complete*
1823 *manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans*
1824 *and specifications for all improvements in the project or as-built plans if available; (iv) all association*
1825 *insurance policies which are currently in force; (v) written unexpired warranties of the contractors,*
1826 *subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (vi) any*
1827 *contracts in which the association is a contracting party; and (vii) a list of manufacturers of paints,*
1828 *roofing materials and other similar materials if specified for use on the association property.*
- 1829 *If the association is managed by a ~~management company~~ common interest community manager in*
1830 *which the declarant, or its principals, have no pecuniary interest or management role, then such*
1831 *~~management company~~ common interest community manager shall have the responsibility to provide the*
1832 *documents and information required by clauses (i), (ii), (iv), and (vi).*
- 1833 *§ 55-509.3. Association charges.*
- 1834 *Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no*
1835 *association may make an assessment or impose a charge against a lot or a lot owner unless the charge*
1836 *is a fee for services provided or related to use of the common area.*
- 1837 *Article 2.*
- 1838 *Disclosure Requirements; Authorized Fees.*
- 1839 *§ 55-509.4. Contract disclosure statement; right of cancellation.*
- 1840 *A. Subject to the provisions of subsection A of § 55-509.10, a person selling a lot shall disclose in*
1841 *the contract that (i) the lot is located within a development that is subject to the Virginia Property*
1842 *Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the property*
1843 *owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser*

1844 may cancel the contract within three days after receiving the association disclosure packet or being
 1845 notified that the association disclosure packet will not be available; (iv) if the purchaser has received
 1846 the association disclosure packet, the purchaser has a right to request an update of such disclosure
 1847 packet in accordance with subsection H of § 55-509.6 or subsection B of § 55-509.7, as appropriate;
 1848 and (v) the right to receive the association disclosure packet and the right to cancel the contract are
 1849 waived conclusively if not exercised before settlement.

1850 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if
 1851 (a) a current annual report has not been filed by the association with either the State Corporation
 1852 Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to
 1853 § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and
 1854 no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c)
 1855 written notice has been provided by the association that a packet is not available.

1856 B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole
 1857 remedy is to cancel the contract prior to settlement.

1858 C. The information contained in the association disclosure packet shall be current as of a date
 1859 specified on the association disclosure packet prepared in accordance with this section; however, a
 1860 disclosure packet update or financial update may be requested in accordance with subsection H of
 1861 § 55-509.6 or subsection B of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i)
 1862 within three days after the date of the contract, if on or before the date that the purchaser signs the
 1863 contract, the purchaser receives the association disclosure packet or is notified that the association
 1864 disclosure packet will not be available; (ii) within three days after receiving the association disclosure
 1865 packet if the association disclosure packet or notice that the association disclosure packet will not be
 1866 available is hand delivered or delivered by electronic means and a receipt obtained; or (iii) within six
 1867 days after the postmark date if the association disclosure packet or notice that the association disclosure
 1868 packet will not be available is sent to the purchaser by United States mail. The purchaser may also
 1869 cancel the contract at any time prior to settlement if the purchaser has not been notified that the
 1870 association disclosure packet will not be available and the association disclosure packet is not delivered
 1871 to the purchaser. Notice of cancellation shall be provided to the lot owner or his agent by one of the
 1872 following methods:

1873 1. Hand delivery;

1874 2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which
 1875 may be either a United States postal certificate of mailing or a certificate of service prepared by the
 1876 sender confirming such mailing;

1877 3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may
 1878 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate
 1879 of service prepared by the sender confirming the electronic delivery; or

1880 4. Overnight delivery using a commercial service or the United States Postal Service.

1881 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of
 1882 cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be
 1883 returned promptly to the purchaser.

1884 D. Whenever any contract is canceled based on a failure to comply with subsection A or C or
 1885 pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the
 1886 cancellation, unless the parties to the contract specify in writing a shorter period.

1887 E. Any rights of the purchaser to cancel the contract provided by this chapter are waived
 1888 conclusively if not exercised prior to settlement.

1889 F. Except as expressly provided in this chapter, the provisions of this section and § 55-509.5 may not
 1890 be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

1891 § 55-509.5. Contents of association disclosure packet; delivery of packet.

1892 A. The association shall deliver, within 14 days after receipt of a written request and instructions by
 1893 a seller or his authorized agent, an association disclosure packet as directed in the written request. The
 1894 information contained in the association disclosure packet shall be current as of a date specified on the
 1895 association disclosure packet. If hand or electronically delivered, the written request is deemed received
 1896 on the date of delivery. If sent by United States mail, the request is deemed received six days after the
 1897 postmark date. An association disclosure packet shall contain the following:

1898 1. The name of the association and, if incorporated, the state in which the association is
 1899 incorporated and the name and address of its registered agent in Virginia;

1900 2. A statement of any expenditure of funds approved by the association or the board of directors that
 1901 shall require an assessment in addition to the regular assessment during the current year or the
 1902 immediately succeeding fiscal year;

1903 3. A statement, including the amount of all assessments and any other mandatory fees or charges
 1904 currently imposed by the association, together with any post-closing fee charged by the common interest

1905 community manager, if any, and associated with the purchase, disposition, and maintenance of the lot
 1906 and to the right of use of common areas, and the status of the account;

1907 4. A statement of whether there is any other entity or facility to which the lot owner may be liable
 1908 for fees or other charges;

1909 5. The current reserve study report or summary thereof, a statement of the status and amount of any
 1910 reserve or replacement fund, and any portion of the fund allocated by the board of directors for a
 1911 specified project;

1912 6. A copy of the association's current budget or a summary thereof prepared by the association, and
 1913 a copy of its statement of income and expenses or statement of its financial position (balance sheet) for
 1914 the last fiscal year for which such statement is available, including a statement of the balance due of
 1915 any outstanding loans of the association;

1916 7. A statement of the nature and status of any pending suit or unpaid judgment to which the
 1917 association is a party and that either could or would have a material impact on the association or its
 1918 members or that relates to the lot being purchased;

1919 8. A statement setting forth what insurance coverage is provided for all lot owners by the
 1920 association, including the fidelity bond maintained by the association, and what additional insurance
 1921 would normally be secured by each individual lot owner;

1922 9. A statement that any improvement or alteration made to the lot, or uses made of the lot or
 1923 common area assigned thereto are or are not in violation of the declaration, bylaws, rules and
 1924 regulations, architectural guidelines and articles of incorporation, if any, of the association;

1925 10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
 1926 place a sign on the owner's lot advertising the lot for sale;

1927 11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to
 1928 display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size,
 1929 place, and manner of placement or display of such flag and the installation of any flagpole or similar
 1930 structure necessary to display such flag;

1931 12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any
 1932 rules and regulations or architectural guidelines adopted by the association;

1933 13. A copy of any approved minutes of the board of directors and association meetings for the six
 1934 calendar months preceding the request for the disclosure packet;

1935 14. A copy of the notice given to the lot owner by the association of any current or pending rule or
 1936 architectural violation;

1937 15. A copy of the fully completed one-page cover sheet developed by the Common Interest
 1938 Community Board pursuant to § 54.1-2350; and

1939 16. Certification that the association has filed with the Common Interest Community Board the
 1940 annual report required by § 55-516.1, which certification shall indicate the filing number assigned by
 1941 the Common Interest Community Board, and the expiration date of such filing.

1942 B. Failure to receive copies of an association disclosure packet shall not excuse any failure to
 1943 comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

1944 C. The disclosure packet shall be delivered in accordance with the written request and instructions of
 1945 the seller or his authorized agent, including whether the disclosure packet shall be delivered
 1946 electronically or in hard copy and shall specify the complete contact information for the parties to
 1947 whom the disclosure packet shall be delivered. The disclosure packet required by this section, shall not,
 1948 in and of itself, be deemed a security within the meaning of § 13.1-501.

1949 D. The seller or his authorized agent may request that the disclosure packet be provided in hard
 1950 copy or in electronic form. An association or common interest community manager may provide the
 1951 disclosure packet electronically; however, the seller or his authorized agent shall have the right to
 1952 request that the association disclosure packet be provided in hard copy. The seller or his authorized
 1953 agent shall continue to have the right to request a hard copy of the disclosure packet in person at the
 1954 principal place of business of the association. If the seller or his authorized agent requests that the
 1955 disclosure packet be provided in electronic format, neither the association nor its common interest
 1956 community manager may require the seller or his authorized agent to pay any fees to use the provider's
 1957 electronic network or system. If the seller or his authorized agent asks that the disclosure packet be
 1958 provided in electronic format, the seller or his authorized agent may designate no more than two
 1959 additional recipients to receive the disclosure packet in electronic format at no additional charge.

1960 § 55-509.6. Fees for disclosure packet; associations managed by a common interest community
 1961 manager.

1962 A. The association or its common interest community manager may charge certain fees as authorized
 1963 by this section for the inspection of the property, the preparation and issuance of the disclosure packet
 1964 required § 55-509.5, and for such other services as set out in this section. The seller or his authorized
 1965 agent shall specify whether the disclosure packet shall be delivered electronically or in hard copy, and
 1966 shall specify the complete contact information for the parties to whom the disclosure packet shall be

1967 delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or
 1968 his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the
 1969 designated persons, at the same time it is delivered to the seller or his authorized agent.

1970 B. A reasonable fee may be charged by the preparer as follows for:

1971 1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration
 1972 and as required to prepare the association disclosure packet, a fee not to exceed \$100;

1973 2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed
 1974 \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed \$125 for no more
 1975 than two electronic copies. Only one fee shall be charged for the preparation and delivery of the
 1976 disclosure packet;

1977 3. At the option of the seller or his authorized agent, expediting the inspection, preparation and
 1978 delivery of the disclosure packet, an additional expedite fee not to exceed \$50;

1979 4. At the option of the seller or his authorized agent, an additional hard copy of the disclosure
 1980 packet, a fee not to exceed \$25 per hard copy, for each hard copy requested other than a hard copy for
 1981 the seller, purchaser, or the settlement agent;

1982 5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the
 1983 actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of
 1984 the association disclosure packet; and

1985 6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of
 1986 establishing the purchaser as the owner of the property in the records of the association, a fee not to
 1987 exceed \$50.

1988 Except as otherwise provided in subsection E, neither the association nor its common interest
 1989 community manager shall require cash, check, certified funds or credit card payments at the time the
 1990 request for the disclosure packet is made.

1991 For purposes of this section, an expedite fee shall only be charged if the inspection and preparation
 1992 of delivery of the disclosure packet are completed within five business days of the request for a
 1993 disclosure packet.

1994 C. No fees other than those specified in this section, and as limited by this section, shall be charged
 1995 by the association or its common interest community manager for compliance with the duties and
 1996 responsibilities of the association under this chapter. The association or its common interest community
 1997 manager shall publish and make available in paper or electronic format, or both, a schedule of the
 1998 applicable fees so the seller or his authorized agent will know such fees at the time of requesting the
 1999 packet.

2000 D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale
 2001 of the lot and shall be due and payable out of the settlement proceeds in accordance with this section.
 2002 The seller shall be responsible for all costs associated with the preparation and delivery of the
 2003 association disclosure packet, except for the costs of any disclosure packet update or financial update,
 2004 which costs shall be the responsibility of the requestor, payable at settlement. Neither the association
 2005 nor its common interest community manager shall require cash, check, certified funds, or credit card
 2006 payments at the time of the request is made for the association disclosure packet.

2007 E. If settlement does not occur within 90 days of the delivery of the disclosure packet, or funds are
 2008 not collected at settlement and disbursed to the association or the common interest community manager,
 2009 all fees, including those costs that would have otherwise been the responsibility of the purchaser or
 2010 settlement agent, shall be assessed against the lot owner and shall be the personal obligation of the lot
 2011 owner and shall be an assessment against the lot and collectible as any other assessment in accordance
 2012 with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check,
 2013 certified funds, or credit card, if credit card payment is an option offered by the association. The
 2014 association shall pay the common interest community manager the amount due from the lot owner
 2015 within 30 days after invoice.

2016 F. The maximum allowable fees charged in accordance with this section shall adjust every five years,
 2017 as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the
 2018 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
 2019 by the Bureau of Labor Statistics of the U. S. Department of Labor.

2020 G. If an association disclosure packet has been issued for a lot within the preceding 12-month
 2021 period, a person specified in the written instructions of the seller or his authorized agent, including the
 2022 seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet
 2023 update. The requestor shall specify whether the disclosure packet update shall be delivered
 2024 electronically or in hard copy, and shall specify the complete contact information of the parties to whom
 2025 the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the
 2026 written request.

2027 H. The settlement agent may request a financial update. The requestor shall specify whether the

2028 *financial update shall be delivered electronically or in hard copy, and shall specify the complete contact*
2029 *information of the parties to whom the update shall be delivered. The financial update shall be delivered*
2030 *within three business days of the written request.*

2031 *I. A reasonable fee for the disclosure packet update or financial update may be charged by the*
2032 *preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may*
2033 *request that the association or the common interest community manager perform an additional*
2034 *inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not*
2035 *to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement*
2036 *occurs on the sale of the property. Neither the association nor its common interest community manager,*
2037 *if any, shall require cash, check, certified funds, or credit card payments at the time the request is made*
2038 *for the disclosure packet update. The requestor may request that the specified update be provided in*
2039 *hard copy or in electronic form.*

2040 *J. No association or common interest community manager may require the requestor to request the*
2041 *specified update electronically. The seller or his authorized agent shall continue to have the right to*
2042 *request a hard copy of the specified update in person at the principal place of business of the*
2043 *association. If the requestor asks that the specified update be provided in electronic format, neither the*
2044 *association nor its common interest community manager may require the requester to pay any fees to*
2045 *use the provider's electronic network or system. A copy of the specified update shall be provided to the*
2046 *seller or his authorized agent.*

2047 *K. When an association disclosure packet has been delivered as required by § 55-509.5, the*
2048 *association shall, as to the purchaser, be bound by the statements set forth therein as to the status of*
2049 *the assessment account and the status of the lot with respect to any violation of the declaration, bylaws,*
2050 *rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as*
2051 *of the date of the statement unless the purchaser had actual knowledge that the contents of the*
2052 *disclosure packet were in error.*

2053 *L. If the association or its common interest community manager has been requested in writing to*
2054 *furnish the association disclosure packet required by § 55-509.5, failure to provide the association*
2055 *disclosure packet substantially in the form provided in this section shall be deemed a waiver of any*
2056 *claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or*
2057 *architectural guidelines existing as of the date of the request with respect to the subject lot. The*
2058 *preparer of the association disclosure packet shall be liable to the seller in an amount equal to the*
2059 *actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall*
2060 *nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural*
2061 *guidelines of the association as to all matters arising after the date of the settlement of the sale.*

2062 *§ 55-509.7. Fees for disclosure packets; associations not managed by a common interest community*
2063 *manager.*

2064 *A. The association may charge a fee for the preparation and issuance of the association disclosure*
2065 *packet required by § 55-509.5. Any fee shall reflect the actual cost of the preparation of the association*
2066 *disclosure packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs*
2067 *incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify*
2068 *whether the association disclosure packet shall be delivered electronically or in hard copy and shall*
2069 *specify the complete contact information of the parties to whom the disclosure packet shall be delivered.*
2070 *If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his*
2071 *authorized agent, the preparer shall provide the disclosure packet directly to the designated persons, at*
2072 *the same time it is delivered to the seller or his authorized agent. The association shall advise the*
2073 *requestor if electronic delivery of the disclosure packet or the disclosure packet update or financial*
2074 *update is not available, if electronic delivery has been requested by the seller or his authorized agent.*

2075 *B. If an association disclosure packet has been issued for a lot within the preceding 12-month*
2076 *period, a person specified in the written instructions of the seller or his authorized agent, including the*
2077 *seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet*
2078 *update. The requestor shall specify whether the disclosure packet update shall be delivered*
2079 *electronically or in hard copy and shall specify the complete contact information of the parties to whom*
2080 *the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days*
2081 *of the written request therefor.*

2082 *C. The settlement agent may request a financial update. The requestor shall specify whether the*
2083 *financial update shall be delivered electronically or in hard copy, and shall specify the complete contact*
2084 *information of the parties to whom the update shall be delivered. The financial update shall be delivered*
2085 *within three business days of the written request therefor.*

2086 *D. A reasonable fee for the disclosure packet update or a financial update may be charged by the*
2087 *preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may*
2088 *request that the association perform an additional inspection of the exterior of the dwelling unit and the*
2089 *lot, as authorized in the declaration, for a fee not to exceed \$50. Any fees charged for the specified*

2090 update shall be collected at the time settlement occurs on the sale of the lot. The association shall not
 2091 require cash, check, certified funds, or credit card payments at the time the request is made for the
 2092 disclosure packet update. The requestor may request that the specified update be provided in hard copy
 2093 or in electronic form.

2094 E. No association may require the requestor to request the specified update electronically. The seller
 2095 or his authorized agent shall continue to have the right to request a hard copy of the specified update
 2096 in person at the principal place of business of the association. If the requestor asks that the specified
 2097 update be provided in electronic format, the association shall not require the requestor to pay any fees
 2098 to use the provider's electronic network or system. If the requestor asks that the specified update be
 2099 provided in electronic format, the requestor may designate no more than two additional recipients to
 2100 receive the specified update in electronic format at no additional charge. A copy of the specified update
 2101 shall be provided to the seller or his authorized agent.

2102 F. When a disclosure packet has been delivered as required by § 55-509.5, the association shall, as
 2103 to the purchaser, be bound by the statements set forth therein as to the status of the assessment account
 2104 and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations,
 2105 architectural guidelines and articles of incorporation, if any, of the association as of the date of the
 2106 statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in
 2107 error.

2108 G. If the association has been requested to furnish the association disclosure packet required by this
 2109 section, failure to provide the association disclosure packet substantially in the form provided in this
 2110 section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the
 2111 declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the
 2112 request with respect to the subject lot. The association shall be liable to the seller in an amount equal
 2113 to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall
 2114 nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural
 2115 guidelines of the association as to all matters arising after the date of the settlement of the sale.

2116 § 55-509.8. Properties subject to more than one declaration.

2117 If the lot is subject to more than one declaration, the association or its common interest community
 2118 manager may charge the fees authorized by § 55-509.6 or 55-509.7 for each of the applicable
 2119 associations, provided however, that no association shall charge inspection fees unless the association
 2120 has architectural control over the lot.

2121 § 55-509.9. Requests by settlement agents.

2122 A. The settlement agent may request a financial update from the preparer of the disclosure packet.
 2123 The preparer of the disclosure packet shall, upon request from the settlement agent, provide the
 2124 settlement agent with written escrow instructions directing the amount of any funds to be paid from the
 2125 settlement proceeds to the association or the common interest community manager. There shall be no
 2126 fees charged for a response by the association or its common interest community manager to a request
 2127 from the settlement agent for written escrow instructions, however a fee may be charged for a financial
 2128 update pursuant to this chapter.

2129 B. The settlement agent, when transmitting funds to the association or the common interest
 2130 community manager, shall, unless otherwise directed in writing, provide the preparer of the disclosure
 2131 packet with (i) the complete record name of the seller, (ii) the address of the subject lot, (iii) the
 2132 complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the
 2133 application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise
 2134 prohibited.

2135 § 55-509.10. Exceptions to disclosure requirements.

2136 A. The contract disclosures required by § 55-509.4 and the association disclosure packet required by
 2137 § 55-509.5 shall not be provided in the case of:

2138 1. A disposition of a lot by gift;

2139 2. A disposition of a lot pursuant to court order if the court so directs;

2140 3. A disposition of a lot by foreclosure or deed in lieu of foreclosure; or

2141 4. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or
 2142 for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by
 2143 such person or entity. If such disclosures are not requested, a statement in the contract of sale that the
 2144 purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the
 2145 seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the
 2146 declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all
 2147 matters.

2148 B. In any transaction in which an association disclosure packet is required and a trustee acts as the
 2149 seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the
 2150 association and provide the packet to the purchaser.

2151 C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet
 2152 required by § 55-509.5 need not include the information referenced in subdivisions A 2, A 3, A 5 nor A
 2153 9 of § 55-509.5, and it shall include the information referenced in subdivisions A 16 of § 55-509.5 only
 2154 if the association has filed an annual report prior to the date of such disclosure packet.

2155 Article 3.

2156 Operation and Management of Association.

2157 § 55-510. Access to association records; association meetings; notice.

2158 A. The association shall keep detailed records of receipts and expenditures affecting the operation
 2159 and administration of the association. All financial books and records shall be kept in accordance with
 2160 generally accepted accounting practices.

2161 B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the
 2162 association, including, but not limited to, the association's membership list and addresses, which shall
 2163 not be used for purposes of pecuniary gain or commercial solicitation, and aggregate salary information
 2164 of employees of the association, shall be available for examination and copying by a member in good
 2165 standing or his authorized agent so long as the request is for a proper purpose related to his membership
 2166 in the association. This right of examination shall exist without reference to the duration of membership
 2167 and may be exercised (i) only during reasonable business hours or at a mutually convenient time and
 2168 location and (ii) upon five days' written notice reasonably identifying the purpose for the request and the
 2169 specific books and records of the association requested.

2170 C. Books and records kept by or on behalf of an association may be withheld from inspection and
 2171 copying to the extent that they concern:

2172 1. Personnel matters relating to specific, identified persons or a person's medical records;

2173 2. Contracts, leases, and other commercial transactions to purchase or provide goods or services,
 2174 currently in or under negotiation;

2175 3. Pending or probable litigation. Probable litigation means those instances where there has been a
 2176 specific threat of litigation from a party or the legal counsel of a party;

2177 4. Matters involving state or local administrative or other formal proceedings before a government
 2178 tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to
 2179 § 55-513;

2180 5. Communications with legal counsel which relates that relate to subdivisions 1 through 4 or which
 2181 is that are protected by the attorney-client privilege or the attorney work product doctrine;

2182 6. Disclosure of information in violation of law;

2183 7. Meeting minutes or other confidential records of an executive session of the board of directors
 2184 held in accordance with subsection C of § 55-510.1;

2185 8. Documentation, correspondence or management or board reports compiled for or on behalf of the
 2186 association or the board by its agents or committees for consideration by the board in executive session;
 2187 or

2188 9. Individual unit owner or member files, other than those of the requesting lot owner, including any
 2189 individual lot owner's or member's files kept by or on behalf of the association.

2190 D. Prior to providing copies of any books and records to a member in good standing under this
 2191 section, the association may impose and collect a charge, reflecting the reasonable costs of materials and
 2192 labor, not to exceed the actual costs thereof.

2193 E. Meetings of the association shall be held in accordance with the provisions of the bylaws at least
 2194 once each year after the formation of the association. The bylaws shall specify an officer or his agent
 2195 who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven
 2196 days in advance of any other meeting, send to each member notice of the time, place, and purposes of
 2197 such meeting. Notice shall be sent by United States mail to all members at the address of their
 2198 respective lots unless the member has provided to such officer or his agent an address other than the
 2199 address of the member's lot; or notice may be hand delivered by the officer or his agent, provided the
 2200 officer or his agent certifies in writing that notice was delivered to the member. Except as provided in
 2201 subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i)
 2202 within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such
 2203 minutes are distributed to board members as part of an agenda package for the next meeting of the
 2204 board of directors, whichever occurs first.

2205 § 55-513. Adoption and enforcement of rules.

2206 A. ~~The~~ Except as otherwise provided in this chapter, the board of directors of the association shall
 2207 have the power to establish, adopt, and enforce rules and regulations with respect to use of the common
 2208 areas and with respect to such other areas of responsibility assigned to the association by the declaration,
 2209 except where expressly reserved by the declaration to the members. Rules and regulations may be
 2210 adopted by resolution and shall be reasonably published or distributed throughout the development. A
 2211 majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions
 2212 of the association's bylaws and called for that purpose, shall repeal or amend any rule or regulation

2213 adopted by the board of directors. Rules and regulations may be enforced by any method normally
 2214 available to the owner of private property in Virginia, including, but not limited to, application for
 2215 injunctive relief or damages, during which the court may award to the association court costs and
 2216 reasonable attorneys' fees.

2217 B. The board of directors of the association shall also have the power, to the extent the declaration
 2218 or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's
 2219 right to use facilities or services, including utility services, provided directly through the association for
 2220 nonpayment of assessments which are more than sixty days past due, to the extent that access to the lot
 2221 through the common areas is not precluded and provided that such suspension shall not endanger the
 2222 health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member
 2223 for any violation of the declaration or rules and regulations for which the member or his family
 2224 members, tenants, guests, or other invitees are responsible.

2225 Before any such charges or suspension may be imposed, the member shall be given an opportunity to
 2226 be heard and to be represented by counsel before the board of directors or other tribunal specified in the
 2227 documents. Notice of a hearing, including the charges or other sanctions that may be imposed, shall be
 2228 hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the
 2229 address of record with the association at least fourteen days prior to the hearing.

2230 The amount of any charges so assessed shall not be limited to the expense or damage to the
 2231 association caused by the violation, but shall not exceed fifty dollars for a single offense or ten dollars
 2232 per day for any offense of a continuing nature and shall be treated as an assessment against the
 2233 member's lot for the purposes of § 55-516. However, the total charges for any offense of a continuing
 2234 nature shall not be assessed for a period exceeding ninety days. After the date a lawsuit is filed
 2235 challenging any such charges, no additional charges shall accrue. If the court rules in favor of the
 2236 association, it shall be entitled to collect such charges from the date the action was filed as well as all
 2237 other charges assessed pursuant to this section against the lot owner prior to the action.

2238 The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt
 2239 requested, to the member at the address of record with the association within seven days of the hearing.

2240 § 55-513.1. Flag display; necessary supporting structures; affirmative defense.

2241 A. Unless specifically prohibited by the association's rules and regulations or architectural guidelines
 2242 provided in the disclosure packet required pursuant to § ~~55-512~~ 55-509.5, the association shall not
 2243 prohibit any lot owner from displaying the flag of the United States.

2244 B. The association may restrict the display of such flag in the common areas and may establish
 2245 reasonable restrictions as to the time, size, place, duration, and manner of placement or display.

2246 In any action brought by the association under § 55-513, the lot owner shall be entitled to assert as
 2247 an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or
 2248 any flagpole or similar structure necessary to display such flags was not contained in the disclosure
 2249 packet required pursuant to § ~~55-512~~ 55-509.5.

2250 § 55-514. Authority to levy special assessments.

2251 A. In addition to all other assessments which are authorized in the declaration, the board of directors
 2252 of an association shall have the power to levy a special assessment against its members if the purpose in
 2253 so doing is found by the board to be in the best interests of the association and the proceeds of the
 2254 assessment are used primarily for the maintenance and upkeep of the common area and such other areas
 2255 of association responsibility expressly provided for in the declaration, including capital expenditures. A
 2256 majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance
 2257 with the provisions of the association's bylaws within sixty days of promulgation of the notice of the
 2258 assessment shall rescind or reduce the special assessment. No director or officer of the association shall
 2259 be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the
 2260 director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and
 2261 the association shall indemnify such director or officer against any damage resulting from any claimed
 2262 breach of fiduciary duty arising therefrom.

2263 B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the
 2264 association to the lien provided by § 55-516 as well as any other rights afforded a creditor under law.

2265 C. The failure of a member to pay the special assessment allowed by subsection A will provide the
 2266 association with the right to deny the member access to any or all of the common areas.
 2267 Notwithstanding the immediately preceding sentence, direct access to the member's lot over any road
 2268 within the development which is a common area shall not be denied the member.

2269 § 55-514.2. Deposit of funds; fidelity bond.

2270 A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be
 2271 kept in a fiduciary trust account in a federally insured financial institution separate from other assets of
 2272 the managing agent. The funds shall be the property of the association and shall be segregated for each
 2273 account in the records of the managing agent in a manner that permits the funds to be identified on an

2274 individual association basis.

2275 B. Any association collecting assessments for common expenses shall obtain and maintain a blanket
 2276 fidelity bond or employee dishonesty insurance policy ~~covering~~ *insuring the association against losses*
 2277 *resulting from theft or dishonesty committed by the officers, directors, and or persons employed by the*
 2278 *association, and/or committed by any managing agent and/or employees of the managing agent. Such*
 2279 *bond or insurance policy shall provide a minimum of \$10,000 in coverage in an amount equal to the*
 2280 *lesser of \$1 million or the amount of the reserve balances of the association plus one-fourth of the*
 2281 *aggregate annual assessment income of such association. The minimum coverage amount shall be*
 2282 *\$10,000. The board of directors or managing agent may obtain such bond or insurance on behalf of the*
 2283 *association.*

2284 § 55-516.1. Annual report by association.

2285 A. The association shall file an annual report in a form and at such time as prescribed by regulations
 2286 of the ~~Real Estate Common Interest Community Board.~~

2287 B. The ~~Real Estate Common Interest Community Board~~ may accept copies of forms submitted to
 2288 other state agencies to satisfy the requirements of this section if such forms contain substantially the
 2289 same information required by the ~~Real Estate Common Interest Community Board.~~

2290 C. The annual report shall be accompanied by a fixed fee in an amount established by the ~~Real~~
 2291 ~~Estate Common Interest Community Board.~~ *All fees shall, together with an annual assessment in an*
 2292 *amount equal to the lesser of \$1,000 (or such other amount as the Board may establish by regulation)*
 2293 *or 0.02 percent of the association's gross assessment income during the preceding calendar year to be*
 2294 *remitted to the State Treasurer and shall be placed to the credit of the Common Interest community*
 2295 *Management Fund established pursuant to § 55-529.*

2296 § 55-528. Definitions.

2297 As used in this chapter, unless the context requires a different meaning:

2298 "Association" includes condominium, cooperative, or property owners' associations.

2299 "*Balance of the fund*" means *cash, securities that are legal investments for fiduciaries under the*
 2300 *provisions of subdivisions (1), (2), and (4) of § 26-40, and repurchase agreements secured by*
 2301 *obligations of the United States government or any agency thereof, and shall not mean accounts*
 2302 *receivable, judgments, notes, accrued interest, or other obligations to the fund.*

2303 "Board" means the ~~Real Estate Common Interest Community Board.~~

2304 "*Claimant*" means *upon proper application to the Director, a receiver for a common interest*
 2305 *community manager appointed pursuant to § 54.1-2353 in those cases in which there are not sufficient*
 2306 *funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject*
 2307 *common interest community manager or to pay an award of reasonable fees, costs, and expenses to the*
 2308 *receiver.*

2309 "Common interest community" means real estate located within the Commonwealth subject to a
 2310 declaration which contains lots, at least some of which are residential or occupied for recreational
 2311 purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an
 2312 association and is obligated to pay assessments provided for in a declaration.

2313 "Declaration" means any instrument, however denominated, recorded among the land records of the
 2314 county or city in which the development or any part thereof is located, that either (i) imposes on the
 2315 association maintenance or operational responsibilities for the common area as a regular annual
 2316 assessment or (ii) creates the authority in the association to impose on lots, or on the owners or
 2317 occupants of such lots, or on any other entity any mandatory payment of money as a regular annual
 2318 assessment in connection with the provision of maintenance or services or both for the benefit of some
 2319 or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any
 2320 amendment or supplement to the instruments described in this definition.

2321 "*Director*" means *the Director of the Department of Professional and Occupational Regulation.*

2322 "*Governing board*" means *the governing board of an association, including the executive organ of a*
 2323 *condominium unit owners' association, the executive board of a cooperative proprietary lessees'*
 2324 *association, and the board of directors of a property owners' association.*

2325 "Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on
 2326 a recorded subdivision plat for a development or the boundaries of which are described in the
 2327 declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other
 2328 than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative.

2329 § 55-529. Common Interest Community Management Information Fund.

2330 There is hereby created the Common Interest Community Management Information Fund to be used
 2331 in the discretion of the Board to promote the improvement and more efficient operation of common
 2332 interest communities through research and education. The Fund shall consist of money paid into it
 2333 pursuant to §§ 54.1-2349, 55-79.93:1, 55-504.1, and 55-516.1. The Fund shall be established on the
 2334 books of the Comptroller, and any funds remaining in such Fund at the end of the biennium shall not
 2335 revert to the general fund but ~~shall remain in the Fund,~~ *at the discretion of the Board, shall remain in*

2336 *the Fund or shall be transferred to the Common Interest Community Management Recovery Fund*
 2337 *established pursuant to § 55-530.1. Interest earned on the Fund shall be credited to the Fund.*

2338 § 55-530. Powers of the Board; Common interest community ombudsman; complaints.

2339 A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by
 2340 § ~~54.1-2105.1~~ § 54.1-2349 and this chapter.

2341 B. A ~~community association liaison~~ shall be appointed in accordance with § ~~54.1-303~~ who shall
 2342 administer the requirements of this chapter and serve as an information resource on issues relating to the
 2343 governance, administration and operation of common interest communities, including the laws and
 2344 regulations relating thereto. Such information may include nonbinding interpretations of laws or
 2345 regulations governing common interest communities and referrals to public and private agencies offering
 2346 alternative dispute resolution services, with a goal of reducing and resolving conflicts among
 2347 associations and their members. The compensation for the community association liaison designated
 2348 pursuant to this chapter shall be paid from the Fund; provided that no more than sixty percent of the
 2349 moneys collected annually in the Fund shall be used for such purpose.

2350 C. The Board shall use at least forty percent of the moneys collected annually in the Fund created by
 2351 this chapter for financing or promoting the following:

2352 1. Information and research in the field of common interest community management and operation;

2353 2. Expeditious and inexpensive procedures for resolving common interest community disputes;

2354 3. Seminars and educational programs designed to address topics of concern to community
 2355 associations; and

2356 4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

2357 D. The Board shall establish accounting procedures whereby forty percent of the net revenues
 2358 collected in any fiscal year shall be expended in accordance with subsection C in the calendar year that
 2359 begins during that fiscal year.

2360 *The Director in accordance with § 54.1-303 shall appoint a Common Interest Community*
 2361 *Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community*
 2362 *Ombudsman. The Ombudsman shall be a member in good standing in the Virginia State Bar. All state*
 2363 *agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in*
 2364 *the performance of its duties under this chapter. The expenses for the operations of the Office of the*
 2365 *Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall be*
 2366 *paid first from interest earned on deposits constituting the fund and the balance from the moneys*
 2367 *collected annually in the fund.*

2368 C. The Office of the Common Interest Community Ombudsman shall:

2369 1. Assist members in understanding their rights and the processes available to them according to the
 2370 declaration and bylaws of the association;

2371 2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in
 2372 person;

2373 3. Provide to members and other citizens information concerning common interest communities upon
 2374 request;

2375 4. Make available, either separately or through an existing Internet website utilized by the Director,
 2376 information as set forth in subdivision 3 and such additional information as may be deemed
 2377 appropriate;

2378 5. Receive the notices of complaint filed;

2379 6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on
 2380 inquiries received, the types of assistance requested, notices of complaint received, any actions taken,
 2381 and the disposition of each such matter;

2382 7. Upon request, assist members in using the procedures and processes available to them in the
 2383 association, including nonbinding explanations of laws or regulations governing common interest
 2384 communities or interpretations thereof by the Board, and referrals to public and private agencies
 2385 offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among
 2386 associations and their members. Such assistance may require the review of the declaration and other
 2387 records of an association. An association shall provide such information to the Office of the Common
 2388 Interest Community Ombudsman within a reasonable time upon request;

2389 8. Ensure that members have access to the services provided through the Office of the Common
 2390 Interest Community Ombudsman and that the members receive timely responses from the representatives
 2391 of the Office of the Common Interest Community Ombudsman to the inquiries;

2392 9. Upon request to the Director by (i) any of the standing committees of the General Assembly
 2393 having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the
 2394 Director for dissemination to the requesting parties assessments of proposed and existing common
 2395 interest community laws and other studies of common interest community issues;

2396 10. Monitor changes in federal and state laws relating to common interest communities.

2397 11. Provide information to the Director that will permit the Director to report annually on the
2398 activities of the Office of the Common Interest Community Ombudsman to the standing committees of
2399 the General Assembly having jurisdiction over common interest communities and to the Housing
2400 Commission. The Director's report shall be filed by December 1 of each year, and shall include a
2401 summary of significant new developments in federal and state laws relating to common interest
2402 communities each year; and

2403 12. Carry out activities as the Board determines to be appropriate.

2404 D. The Board may use the remainder of the interest earned on the balance of the fund and of the
2405 moneys collected annually and deposited in the fund for financing or promoting the following:

2406 1. Information and research in the field of common interest community management and operation;

2407 2. Expeditious and inexpensive procedures for resolving complaints about an association from
2408 members of the association or other citizens;

2409 3. Seminars and educational programs designed to address topics of concern to community
2410 associations; and

2411 4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

2412 E. The Board shall establish by regulation a requirement that each association shall establish
2413 reasonable procedures for the resolution of written complaints from the members of the association and
2414 other citizens, which system shall include the following:

2415 1. A record of each complaint shall be maintained for no less than one year after the association
2416 acts upon the complaint.

2417 2. Such association shall provide complaint forms or written procedures to be given to persons who
2418 wish to register written complaints. The forms or procedures shall include the address and telephone
2419 number of the association or its common interest community manager to which complaints shall be
2420 directed and the mailing address, telephone number, and electronic mail address of the Office of the
2421 Common Interest Community Ombudsman. The forms and written procedures shall include a clear and
2422 understandable description of the complainant's right to give notice of adverse decisions pursuant to this
2423 section.

2424 F. A complainant may give notice to the Board of any final adverse decision in accordance with
2425 regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse
2426 decision, shall be in writing on forms prescribed by the Board, shall include copies of all records
2427 pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the
2428 Director and paid directly into the state treasury and credited to the Common Interest Community
2429 Management Information Fund, § 55-530.1. The Board may, for good cause shown, waive or refund the
2430 filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the
2431 member. The Director shall provide a copy of the written notice to the association that made the final
2432 adverse decision.

2433 G. The Director or his designee, may request additional information concerning any notice of
2434 complaint from the association that made the final adverse decision. The association shall provide such
2435 information to the Director within a reasonable time upon request. If the Director upon review
2436 determines that the final adverse decision may be in conflict with laws or regulations governing common
2437 interest communities or interpretations thereof by the Board, the Director may, in his sole discretion,
2438 provide the complainant and the association with information concerning such laws or regulations
2439 governing common interest communities or interpretations thereof by the Board. The determination of
2440 whether the final adverse decision may be in conflict with laws or regulations governing common
2441 interest communities or interpretations thereof by the Board shall be a matter within the sole discretion
2442 of the Director, whose decision is final and not subject to further review. The determination of the
2443 Director shall not be binding upon the complainant or the association that made the final adverse
2444 decision.

2445 ~~E~~H. The Board shall issue a certificate of filing to each association which has properly filed in
2446 accordance with this title. The certificate shall include the date of registration and a unique registration
2447 number assigned by the Board.

2448 ~~F~~I. The Board may prescribe regulations which shall be adopted, amended or repealed in accordance
2449 with the Administrative Process Act (2.2-4000 et seq.) to accomplish the purpose of this chapter.

2450 § 55-530.1. Common Interest Community Management Recovery Fund.

2451 A. There is hereby created the Common Interest Community Management Recovery Fund (the Fund)
2452 to be used in the discretion of the Board to protect the interests of associations.

2453 B. Each common interest community manager, at the time of initial application for licensure, and
2454 each association filing its first annual report after the effective date hereof shall be assessed \$25, which
2455 shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee
2456 payment or annual filing fee and transferred to the Fund by the Director within 30 days.

2457 All assessments, except initial assessments, for the Fund shall be deposited within three business days
2458 after their receipt by the Director, in one or more federally insured banks, savings and loan

2459 associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings
 2460 institutions, or savings banks, to the extent in excess of insurance afforded by the Federal Deposit
 2461 Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public
 2462 Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and
 2463 loan associations, or savings banks located in the Commonwealth shall not be considered investment of
 2464 such funds for purposes of this section. Funds maintained by the Director may be invested in securities
 2465 that are legal investments for fiduciaries under the provisions of § 26-40.01.

2466 Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The
 2467 remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest
 2468 Community Management Information Fund or accrue to the Fund.

2469 C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000. Whenever the
 2470 Director determines that the balance of the Fund is or will be less than such minimum balance, the
 2471 Director shall immediately inform the Board. At the same time, the Director may recommend that the
 2472 Board transfer a fixed amount from the Common Interest Community Management Information Fund to
 2473 the Fund to bring the balance of the Fund to the amount required by this subsection. Such transfer shall
 2474 be considered by the Board within 30 days of the notification of the Director.

2475 D. If any such transfer of funds is insufficient to bring the balance of the Fund to the minimum
 2476 amount required by this section, or if a transfer to the fund has not occurred, the Board shall assess
 2477 each association and each common interest community manager within 30 days of notification by the
 2478 Director, a sum sufficient to bring the balance of the Fund to the required minimum amount. The
 2479 amount of such assessment shall be allocated among the associations and common interest community
 2480 managers in proportion to the each payor's most recently paid annual assessment, or if an association
 2481 or common interest community manager has not paid an annual assessment previously, in proportion to
 2482 the average annual assessment most recently paid by associations or common interest community
 2483 managers respectively. The Board may order an assessment at any time in addition to any required
 2484 assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a
 2485 determination made by it or (ii) at the time of license renewal.

2486 Notice to common interest community managers and the governing boards of associations of these
 2487 assessments shall be by first-class mail, and payment of such assessments shall be made by first-class
 2488 mail addressed to the Director within 45 days after the mailing of such notice.

2489 E. If any common interest community manager fails to remit the required payment within 45 days of
 2490 the mailing, the Director shall notify the common interest community manager by first-class mail at the
 2491 latest address of record filed with the Board. If no payment has been received by the Director within 30
 2492 days after mailing the second notice, the license shall be automatically suspended. The license shall be
 2493 restored only upon the actual receipt by the Director of the delinquent assessment.

2494 F. If any association fails to remit the required payment within 45 days of the mailing, the Director
 2495 shall notify the association by first-class mail at the latest address of record filed with the Board. If no
 2496 payment has been received by the Director within 30 days after mailing the second notice, it shall be
 2497 deemed a knowing and willful violation of this section by the governing board of the association.

2498 G. At the close of each fiscal year, whenever the balance of the fund exceeds \$5 million, the amount
 2499 in excess of \$5 million shall be transferred to the Virginia Housing Partnership Revolving Fund,
 2500 § 36-137. Except for payments of costs as set forth in this chapter and transfers pursuant to this
 2501 subsection, there shall be no transfers out of the fund, including transfers to the general fund,
 2502 regardless of the balance of the fund.

2503 H. A claimant may seek recovery from the fund subject to the following conditions:

2504 1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2505 2. Upon proper application to the Director, in those cases in which there are not sufficient funds to
 2506 pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or
 2507 ought to have been held in a fiduciary capacity by the subject common interest community manager, the
 2508 Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient
 2509 funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § 54.1-2353 by the
 2510 court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a
 2511 fiduciary capacity by the subject common interest community manager, as certified by the court
 2512 appointing the receiver.

2513 3. If the Board finds there has been compliance with the required conditions, the Board shall issue a
 2514 directive ordering payment of the amount of such shortfall to the claimant from the fund; provided that
 2515 in no event shall such payment exceed the balance in the fund. When the fund balance is not sufficient
 2516 to pay the aggregate amount of such shortfall, the Board shall direct payment shall be applied first in
 2517 satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore
 2518 the funds that were or ought to have been held in a fiduciary capacity by the subject common interest
 2519 community manager. If the Board has reason to believe that there may be additional claims against the

2520 *fund, the Board may withhold any payment(s) from the fund for a period of not more than one year.*
2521 *After such one-year period, if the aggregate of claims received exceeds the fund balance, the fund*
2522 *balance shall be prorated by the Board among the claimants and paid in the above payment order from*
2523 *the fund in proportion to the amounts of claims remaining unpaid.*

2524 *4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from*
2525 *the fund such amount as shall be directed by the Board upon the execution and delivery to the Director*
2526 *by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of*
2527 *the associations receiving distributions from the fund against the common interest community manager*
2528 *to the extent that such rights were satisfied from the fund.*

2529 *5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall*
2530 *be considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in*
2531 *accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).*

2532 *6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of*
2533 *any court that is contrary to any distribution recommended or authorized by it.*

2534 *7. Upon payment by the Director to a claimant from the fund as provided in this subsection, the*
2535 *Board shall immediately revoke the license of the common interest community manager whose actions*
2536 *resulted in payment from the fund. The common interest community manager whose license was so*
2537 *revoked shall not be eligible to apply for a license as a common interest community manager until he*
2538 *has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of*
2539 *interest from the date of payment from the fund.*

2540 *8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary*
2541 *action against any common interest community manager for any violation of statute or regulation, nor*
2542 *shall the repayment in full by a common interest community manager of the amount paid from the fund*
2543 *on such common interest community manager's account nullify or modify the effect of any disciplinary*
2544 *proceeding against such common interest community manager for any such violation.*

2545 **2. That as of July 1, 2008, the Common Interest Community Board shall be deemed successor in**
2546 **interest to the Real Estate Board within the Department of Professional and Occupational**
2547 **Regulation to the extent that this act transfers powers and duties. All right, title, and interest in**
2548 **and to any real or tangible personal property vested in the Real Estate Board within the**
2549 **Department of Professional and Occupational Regulation shall be transferred to and taken as**
2550 **standing in the name of the Common Interest Community Board to the extent necessary to comply**
2551 **with the provisions of this act.**

2552 **3. That all rules and regulations adopted by the Real Estate Board or the Department of**
2553 **Professional and Occupational Regulation that are in effect as of July 1, 2008, and that pertain to**
2554 **the subject of this act, shall remain in full force and effect until altered, amended, or rescinded by**
2555 **the Common Interest Community Board.**

2556 **4. That the Common Interest Community Board shall promulgate regulations to implement the**
2557 **provisions of this act to be effective within 280 days of its enactment.**

2558 **5. That §§ 55-511 and 55-512 of the Code of Virginia are repealed.**