

1 CHAPTER ~~24~~ XX.

2 VIRGINIA REAL ESTATE COOPERATIVE ACT.

3 **Drafting note: Existing Chapter 24, the Virginia Real Estate Cooperative Act, is**
4 **retained as proposed Chapter XX, which retains the five-article organization of existing**
5 **Chapter 24.**

6 Article 1.

7 General Provisions.

8 **Drafting note: Existing Article 1, containing general provisions for the Virginia**
9 **Real Estate Cooperative Act, is retained as proposed Article 1.**

10 ~~§ 55-424. Title.~~

11 ~~This chapter shall be known and may be cited as the Virginia Real Estate Cooperative~~
12 ~~Act.~~

13 **Drafting note: Existing § 55-424 is recommended for repeal on the basis of § 1-244,**
14 **which states that the caption of a subtitle, chapter, or article operates as a short title**
15 **citation. The short title citation is retained in the title of this chapter.**

16 ~~§ 55-426~~ 55.1-xxx. Definitions.

17 ~~When As used in this chapter or in the declaration and bylaws, unless specifically~~
18 ~~provided otherwise or unless the context requires a different meaning, the following terms shall~~
19 ~~have the meanings respectively set forth:~~

20 "Affiliate of a declarant" means any person ~~who~~ that controls, is controlled by, or is
21 under common control with a declarant. A person "controls" a declarant if the person (i) is a
22 general partner, officer, director, or employer of the declarant; (ii) directly or indirectly or acting
23 in concert with one or more other persons, or through one or more subsidiaries, owns, controls,
24 or holds with power to vote, or holds proxies representing, more than 20 percent of the voting
25 interest in the declarant; (iii) controls in any manner the election of a majority of the directors of
26 the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A
27 person "is controlled by" a declarant if the declarant ~~(+)~~ (a) is a general partner, officer, director, or

28 or employer of the person; ~~(ii)~~ (b) directly or indirectly or acting in concert with one or more
29 persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or
30 holds proxies representing, more than 20 percent of the voting interest in the person; ~~(iii)~~ (c)
31 controls in any manner the election of a majority of the directors of the person; or ~~(iv)~~ (d) has
32 contributed more than 20 percent of the capital of the person. Control does not exist if the
33 powers described in this ~~paragraph~~ definition are held solely as security for an obligation and
34 are not exercised.

35 "Allocated interests" means the common expense liability and the ownership interest and
36 votes in the association allocated to each cooperative interest.

37 "Association" or "proprietary lessees' association" means the proprietary lessees'
38 association organized under § ~~55-458~~ 55.1-xxx.

39 "Capital components" means those items, whether or not a part of the common elements,
40 for which the association has the obligation for repair, replacement, or restoration and for which
41 the executive board determines funding is necessary.

42 "Common elements" means all portions of a cooperative other than the units of such
43 cooperative.

44 "Common expenses" means any expenditures made by, or financial liabilities of, the
45 association, together with any allocations to reserves.

46 "Common expense liability" means liability for common expenses allocated to each
47 cooperative interest pursuant to § ~~55-444~~ 55.1-xxx.

48 "Conversion building" means a building that at any time before creation of the
49 cooperative was occupied wholly or partially by persons other than purchasers and persons who
50 occupy with the consent of purchasers.

51 "Cooperative" means real estate owned by an association, each of the members of which
52 is entitled, by virtue of his ownership interest in the association, to exclusive possession of a
53 unit.

54 "Cooperative interest" means an ownership interest in the association coupled with a
55 possessory interest in a unit under a proprietary lease. For purposes of this ~~act~~ chapter, a
56 declarant is treated as the owner of any cooperative interests or potential cooperative interests to
57 which allocated interests have been allocated pursuant to § ~~55-444~~ 55.1-xxx until that
58 cooperative interest has been created and conveyed to another person.

59 "Declarant" means any person or group of persons acting in concert ~~who~~ that (i) as part
60 of a common promotional plan, offers to dispose of ~~his or~~ its cooperative interest not previously
61 disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for
62 registration of a cooperative under Article 5 (§ ~~55-496~~ 55.1-xxx et seq.) ~~of this chapter~~.

63 "Declaration" means any instruments, however denominated, that create a cooperative
64 and any amendments to those instruments.

65 "Development rights" means any right or combination of rights reserved by a declarant
66 in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or
67 limited common elements within a cooperative; (iii) subdivide units or convert units into
68 common elements; or (iv) withdraw real estate from a cooperative.

69 "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or
70 equitable interest in a cooperative interest, but does not include the transfer or release of a
71 security interest.

72 "Executive board" means the body, regardless of name, designated in the declaration to
73 act on behalf of the association.

74 "Identifying number" means a symbol or address that identifies only one unit in a
75 cooperative.

76 "Leasehold cooperative" means a cooperative in which all or a portion of the real estate
77 is subject to a lease; the expiration or termination of which will terminate the cooperative or
78 reduce its size.

79 "Limited common element" means a portion of the common elements allocated by the
80 declaration or by operation of ~~§ 55-439 paragraph subdivision~~ 2 or 4 ~~of § 55.1-xxx~~ for the
81 exclusive use of at least one ~~or more~~ unit but fewer than all of the units.

82 "Master association" means an organization described in § ~~55-456~~ 55.1-xxx, whether or
83 not it is also an association described in § ~~55-458~~ 55.1-xxx.

84 "Offering" means any advertisement, inducement, solicitation, or attempt to encourage
85 any person to acquire any interest in a cooperative interest, other than as security for an
86 obligation. An advertisement in a newspaper or other periodical of general circulation, or in any
87 broadcast medium to the general public, of a cooperative not located in the Commonwealth, is
88 not an offering if the advertisement states that an offering may be made only in compliance with
89 the law of the jurisdiction in which the cooperative is located.

90 "Person" means a natural person, corporation, business trust, estate, trust, partnership,
91 association, joint venture, government, governmental subdivision or agency, or any other legal
92 or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the
93 trust rather than the trust or the trustee.

94 "Proprietary lease" means an agreement with the association pursuant to which a
95 proprietary lessee has a possessory interest in a unit.

96 "Proprietary lessee" means a person ~~who that~~ owns a cooperative interest, other than as
97 security for an obligation, and the declarant with respect to cooperative interests or potential
98 cooperative interests to which allocated interests have been allocated pursuant to § ~~55-444~~ 55.1-
99 xxx until that cooperative interest has been created and conveyed to another person.

100 "Purchaser" means any person, other than a declarant or a person in the business of
101 selling cooperative interests for his own account, ~~who that~~, by means of a voluntary transfer,
102 acquires or contracts to acquire a cooperative interest other than as security for an obligation.

103 "Real estate" means any leasehold or other estate or interest in, over, or under land,
104 including structures, fixtures, and other improvements and interests ~~which that~~, by custom,
105 usage, or law, pass with a conveyance of land though not described in the contract of sale or

106 instrument of conveyance. "Real estate" includes (i) parcels with or without upper or lower
107 boundaries; and (ii) spaces that may be filled with air or water.

108 "Residential purposes" means use for dwelling or recreational purposes, or both.

109 "Security interest" means an interest in real or personal property, created by contract or
110 conveyance, ~~which that~~ secures payment or performance of an obligation. "Security interest"
111 includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales
112 contract, lease intended as security, assignment of lease or rents intended as security, pledge of
113 an ownership interest in an association, and any other consensual lien or title retention contract
114 intended as security for an obligation.

115 "Special declarant rights" means rights reserved for the benefit of a declarant to: (i)
116 complete improvements described in the public offering statement pursuant to subdivision A 2
117 of § ~~55-478~~ 55.1-xxx; (ii) exercise any development right pursuant to § ~~55-446~~ 55.1-xxx; (iii)
118 maintain sales offices, management offices, signs advertising the cooperative, and models; (iv)
119 use easements through the common elements for the purpose of making improvements within
120 the cooperative or within real estate ~~which that~~ may be added to the cooperative; (v) make the
121 cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative
122 subject to a master association as specified in § ~~55-456~~ 55.1-xxx; or (vii) appoint or remove any
123 officer of the association, any master association, or any executive board member during any
124 period of declarant control.

125 "Time share" means a right to occupy a unit or any of several units during five or more
126 separated time periods over a period of at least five years, including renewal options, whether or
127 not coupled with an estate or interest in a cooperative or a specified portion ~~thereof of such~~
128 estate or interest.

129 "Unit" means a physical portion of the cooperative designated for separate occupancy
130 under a proprietary lease.

131 **Drafting note: Technical changes.**

132 § ~~55-425~~ 55.1-xxx. Applicability.

133 | A. This chapter applies to all cooperatives created within ~~this the~~ Commonwealth after
134 | July 1, 1982. Unless the declaration provides that the entire chapter is applicable, such a
135 | cooperative is subject only to §§ ~~55-429 55.1-xxx~~ and ~~55-430 55.1-xxx~~ if the cooperative
136 | contains only units restricted to nonresidential use or contains no more than three units and is
137 | not subject to any development rights.

138 | B. Except as provided in subsection C, §§ ~~55-426 55.1-xxx, 55-429 55.1-xxx, 55-430~~
139 | ~~55.1-xxx, 55-434 55.1-xxx, 55-440 55.1-xxx, 55-457 and 55.1-xxx, 55-459~~ subsection A,
140 | subdivisions A 1 through 6 and 11 through 17 of § 55.1-xxx [55-459], and §§ 55-468 55.1-xxx,
141 | 55-472 55.1-xxx, 55-474 55.1-xxx, 55-484 55.1-xxx, 55-492 55.1-xxx, and ~~55-493 shall 55.1-~~
142 | xxx apply to all cooperatives created in ~~this the~~ Commonwealth before July 1, 1982. Those
143 | sections apply only with respect to events and circumstances occurring after July 1, 1982, and
144 | do not invalidate existing provisions of the cooperative documents of those cooperatives. With
145 | regard to any cooperative created before July 1, 1982, § ~~55-429 55.1-xxx~~ applies only to real
146 | estate acquired by that cooperative's association on or after that date. For the purposes of this
147 | section, a cooperative was created before July 1, 1982, if the cooperative was conveyed to the
148 | association before that date.

149 | C. If a cooperative created within ~~this the~~ Commonwealth before July 1, 1982, contains
150 | no more than three units and is not subject to any development rights, it is subject only to §§ ~~55-~~
151 | ~~429 55.1-xxx~~ and ~~55-430 55.1-xxx,~~ unless the declaration is amended to make any or all of the
152 | sections enumerated in subsection B apply to that cooperative.

153 | D. This chapter does not apply to cooperatives or cooperative interests located outside
154 | ~~this the~~ Commonwealth, but the public offering statement provisions as given in §§ ~~55-476~~
155 | ~~55.1-xxx~~ through ~~55-483 55.1-xxx~~ apply to all contracts for the disposition of cooperative
156 | interests signed in ~~this the~~ Commonwealth by any party, unless exempt under subsection B of §
157 | ~~55-476 55.1-xxx.~~ The agency Common Interest Community Board regulations provisions under
158 | Article 5 (§ ~~55-496 55.1-xxx~~ et seq.) ~~of this chapter~~ apply to any such offering ~~thereof~~ in ~~this the~~
159 | Commonwealth.

160 E. This chapter does not apply to any cooperatives ~~which that~~ receive federal funding
161 pursuant to the public housing or ~~section~~ Section 8 program under the United States Housing
162 Act of 1937, as amended.

163 F. This chapter does not apply to any cooperative ~~which that~~, when acquired by an
164 association, is subject to a mortgage or deed of trust securing an indebtedness owed to any
165 government or governmental authority to which the association has contractual obligations in
166 addition to those set forth in such mortgage or deed of trust.

167 **Drafting note: Throughout the article, the Common Interest Community Board is**
168 **referred to by its full name because the Common Interest Community Board falls under**
169 **the purview of the Department of Professional and Occupational Regulation, a state**
170 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. Technical**
171 **changes.**

172 § ~~55-427~~ 55.1-xxx. Variation by agreement.

173 Except as expressly provided in this chapter, provisions of this chapter, ~~may shall~~ not be
174 varied by agreement, and rights conferred by this chapter ~~may shall~~ not be waived. A declarant
175 ~~may shall~~ not act under a power of attorney, or use any other device, to evade the limitations or
176 prohibitions of this chapter or the declaration.

177 **Drafting note: The word "may" is replaced with "shall" because the phrase "may**
178 **not" as used in this section expresses an absolute prohibition, which, to be consistent**
179 **throughout the Code, is more properly expressed by the phrase "shall not."**

180 § ~~55-428~~ 55.1-xxx. Property classification of cooperative interests; taxation.

181 A. A cooperative interest is real estate for all purposes. Unless waived by a proprietary
182 lessee, a cooperative interest is subject to the provisions of ~~§§ Title 34 (§ 34-1 through 34-34 et~~
183 ~~seq.)~~, regarding the homestead exemption.

184 B. Any portion of the common elements for which the declarant has reserved any
185 development right ~~must shall~~ be separately taxed and assessed against the declarant, and the
186 declarant alone is liable for the payment of those taxes.

187 C. When the highest and best use of any parcel improved by a multi-unit cooperative
188 apartment complex is achieved by sale of the cooperative apartment units as individual units, the
189 fair market value of the parcel shall be determined by aggregating the fair market value of all
190 taxable real estate ~~which that~~ is part of the parcel, including, ~~without limitation,~~ each
191 cooperative apartment unit and common elements. The fair market value of each such
192 cooperative apartment unit shall be established by determining its fair market value for sale as
193 an individual unit, determined in the same manner, mutatis mutandis, as the fair market value of
194 condominium units. Tax bills shall be issued for each individual cooperative apartment unit.

195 No assessment of any parcel improved by a multi-unit cooperative apartment complex,
196 whether the assessment was made before or after the adoption of this subsection, shall be held to
197 be invalid because of the use of the method described in this subsection to determine the
198 assessment.

199 D. Any duly authorized real estate assessor, board of assessors, or department of real
200 estate assessments may require that all declarants, associations, master associations, and
201 proprietary lessees' associations in the county or city subject to local taxation furnish to such
202 assessor, board, or department on or before a time specified a statement listing all transfers of
203 the cooperative apartment units over a specified period of time and a statement listing all owners
204 and proprietary lessees of the cooperative apartment units as of a specified date. Each such
205 statement shall be certified as to its accuracy by the declarant, association, master association, or
206 proprietary lessees' association for which the statement is furnished, or by a duly authorized
207 agent ~~thereof of such declarant or association~~. Any statement required by this subsection shall
208 be kept confidential in accordance with the provisions of § 58.1-3.

209 E. ~~Notwithstanding any other provision of law, the provisions of subsections~~ Subsections
210 C and D ~~of this section shall~~ apply to all cooperatives created in ~~this the~~ Commonwealth,
211 whether created before, on, or after July 1, 1982. However, subsections C and D ~~shall do~~ not
212 apply to any multi-unit cooperative apartment complex, the cooperative apartment units of
213 which have been continually in use as such since December 31, 1967.

214 F. Any residential cooperative association, the members of which are owners of
215 cooperative interests in a cooperative under this chapter, shall not be deemed to be a business
216 for any state and local purposes, including, ~~but not limited to,~~ liability for payment of sales,
217 meals, hotel, motel, or gross receipts taxes and business licenses, to the extent that ~~it~~ such
218 residential cooperative association collects payments from residents of ~~the~~ such cooperative.
219 ~~The provisions of this subsection are declaratory of existing law.~~

220 G. Any tangible personal property owned by a residential cooperative association that
221 would be considered household goods and personal effects if owned and used by an individual
222 or by a family or household incident to maintaining an abode shall be considered household
223 goods and personal effects owned and used by an individual or by a family or household
224 incident to maintaining an abode for the purposes of § 58.1-3504 and any local ordinance
225 authorized ~~thereby pursuant to § 58.1-3504.~~ ~~The provisions of this subsection are declaratory of~~
226 ~~existing law.~~

227 **Drafting note: In subsection C, the phrase "without limitation" is stricken**
228 **following the term "including," and in subsection F, the phrase "but not limited to" is**
229 **stricken after the term "including" on the basis of § 1-218, which states that throughout**
230 **the Code "'Includes' means includes, but not limited to." In subsections F and G, the**
231 **phrase "The provisions of this subsection are declaratory of existing law" is stricken as**
232 **unnecessary.**

233 § ~~55-429~~ 55.1-xxx. Applicability of local ordinances, regulations, and building codes;
234 ~~county and municipal~~ local authority.

235 A. No zoning or other land use ordinance shall prohibit cooperatives as such by reason
236 of ~~the~~ their form of ownership ~~inherent therein.~~ ~~Neither shall any~~ No cooperative shall be treated
237 differently by any zoning or other land use ordinance ~~which that~~ would permit a physically
238 identical project or development under a different form of ownership.

239 B. Subdivision and site plan ordinances in any ~~county, city or town in the~~
240 Commonwealth locality shall apply to any cooperative in the same manner as such ordinances

241 would apply to a physically identical project or development under a different form of
242 ownership. Nevertheless, the declarant need not apply for or obtain subdivision approval to
243 record cooperative instruments against a portion of the land that may be submitted to the
244 cooperative if the site plan approval for the land being submitted to the cooperative has first
245 been obtained.

246 C. During development of a cooperative containing additional land or withdrawable
247 land, phase lines created by the cooperative instruments shall not be considered property lines
248 for purposes of subdivision. If the cooperative may no longer be expanded by the addition of
249 additional land, ~~then~~ the owner of the land not part of the cooperative shall subdivide such land
250 prior to its conveyance, unless such land is subject to an approved site plan as provided in
251 subsection B, or prior to modification of such approved site plan. In the event of any
252 conveyance of land within phase lines of the cooperative, the cooperative and any lot created by
253 such conveyance shall be deemed to comply with the local subdivision ordinance, provided that
254 such land is subject to an approved site plan.

255 D. ~~Counties, cities and towns~~ Localities may provide by ordinance that proposed
256 cooperatives ~~comprised of~~ comprising conversion buildings and the use ~~thereof, which of such~~
257 conversion buildings that do not conform to the zoning, land use, and site plan regulations of the
258 respective county or city in which the property is located, shall secure a special use permit, a
259 special exception, or variance, as ~~the case may be~~ applicable, prior to such ~~property property's~~
260 becoming a cooperative. ~~A~~ The local authority shall grant a request for such a special use
261 permit, special exception, or variance filed on or after July 1, 1982, ~~shall be granted~~ if the
262 applicant can demonstrate to the reasonable satisfaction of the local authority that the
263 nonconformities are not likely to be adversely affected by the proposed conversion. ~~No action~~
264 ~~on~~ The local authority shall not unreasonably delay action on any such request ~~shall be~~
265 ~~unreasonably delayed~~. In the event of an approved conversion, ~~counties, cities, towns a locality,~~
266 sanitary ~~districts~~ district, or other political ~~subdivisions~~ subdivision may impose such charges
267 and fees as are lawfully imposed by such locality, sanitary district, or other political

268 [subdivisions](#) [subdivision](#) as a result of construction of new structures to the extent that such
269 charges and fees, or portions of such charges and fees, imposed upon property subject to such
270 conversions may be reasonably related to greater or additional services provided by the [locality](#),
271 [sanitary district, or](#) political subdivision as a result of the conversion.

272 E. Nothing in this section shall be construed to permit application of any provision of the
273 Uniform Statewide Building Code (§ 36-97 et seq.), or any local ordinances regulating the
274 design and construction of roads, sewer and water lines, stormwater management facilities, or
275 other public infrastructure, ~~which that~~ is not expressly applicable to cooperatives by reason of
276 ~~the their~~ form of ownership ~~inherent therein~~ to a cooperative in a manner different from the
277 manner in which such provision is applied to other buildings of similar physical form and nature
278 of occupancy.

279 **Drafting note: In the catchline of the section, the phrase "county and municipal" is**
280 **replaced with the term "locality," and throughout the section the phrase "county, city, or**
281 **town" is replaced with the term "locality," on the basis of § 1-221, which states that**
282 **throughout the Code "'Locality' means a county, city, or town as the context may**
283 **require." In subsection D, "locality, sanitary district, or other" is inserted before the word**
284 **"political subdivision" in two places for consistency with the beginning of the sentence.**
285 **Technical changes are made.**

286 § ~~55-430~~ [55.1-430](#). Eminent domain.

287 A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent
288 domain leaving the proprietary lessee with a remnant ~~which that~~ may not practically or lawfully
289 be used for any purpose permitted by the declaration, the award for such unit ~~must shall~~ include
290 compensation to the proprietary lessee for the value of his cooperative interest. Upon
291 acquisition, unless the decree otherwise provides, that cooperative interest's allocated interests
292 are automatically reallocated to the remaining cooperative interests in proportion to the
293 respective allocated interests of those cooperative interests before the taking, and the association
294 shall promptly prepare, execute, and record an amendment to the declaration reflecting the

295 reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection
296 is thereafter a common element.

297 B. Except as provided in subsection A, if part of a unit is acquired by eminent domain,
298 the award for such unit ~~must~~ shall compensate the proprietary lessee for the reduction in value
299 of his cooperative interest. Unless the decree provides otherwise, upon acquisition (i) that
300 cooperative interest's allocated interests are reduced in proportion to the reduction in the size of
301 the unit, or on any other basis specified in the declaration; and (ii) the portion of the allocated
302 interests divested from the cooperative interest of which the partially acquired unit is a part is
303 automatically reallocated to that cooperative interest and the remaining units in proportion to the
304 respective allocated interests of those cooperative interests before the taking, with the
305 cooperative interest of which the partially acquired unit is a part participating in the reallocation
306 on the basis of its reduced allocated interests.

307 C. If part of the common elements is acquired by eminent domain, the portion of the
308 award attributable to the common elements taken ~~must~~ shall be paid to the association. Unless
309 the declaration provides otherwise, any portion of the award attributable to the acquisition of a
310 limited common element ~~must~~ shall be equally divided among the proprietary lessees of the
311 units to which that limited common element was allocated at the time of acquisition.

312 D. The court decree shall be recorded in every ~~city or~~ county or city in which any
313 portion of the cooperative is located.

314 **Drafting note: Technical changes.**

315 § ~~55-431~~ 55.1-xxx. General principles of law applicable.

316 The principles of law and equity, including the law of corporations and unincorporated
317 associations, the law of real property, and the law relative to capacity to contract, principal and
318 agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,
319 receivership, substantial performances, or other validating or invalidating cause supplement the
320 provisions of this chapter, except to the extent inconsistent with this chapter.

321 **Drafting note: Technical changes.**

322 § ~~55-432~~ 55.1-xxx. Construction against implicit repeal.

323 This chapter, being a general act intended as a unified coverage of its subject matter,
324 shall not be impliedly repealed by subsequent legislation if that construction can reasonably be
325 avoided.

326 **Drafting note: No change.**

327 § ~~55-433~~ 55.1-xxx. Uniformity of application and construction.

328 This chapter shall be applied and construed so as to effectuate its general purpose to
329 make uniform the law with respect to cooperatives in ~~this~~ the Commonwealth.

330 **Drafting note: Technical change.**

331 § ~~55-434~~ 55.1-xxx. Unconscionable agreement or term of contract.

332 A. The court, upon finding as a matter of law that a contract or contract clause was
333 unconscionable at the time the contract was made, may (i) refuse to enforce the contract; (ii)
334 enforce the remainder of the contract without the unconscionable clause; or (iii) limit the
335 application of any unconscionable clause in order to avoid an unconscionable result.

336 B. Whenever it is claimed, or appears to the court, that a contract or any contract clause
337 is or may be unconscionable, the parties, in order to aid the court in making the determination,
338 shall be afforded a reasonable opportunity to present evidence as to:

339 1. The commercial setting of the negotiations;

340 2. Whether a party has knowingly taken advantage of the inability of the other party to
341 reasonably protect his interests by reason of physical or mental infirmity, illiteracy, or inability
342 to understand the language of the agreement or similar factors;

343 3. The effect and purpose of the contract or clause; and

344 4. If a sale, any gross disparity at the time of contracting between the amount charged for
345 the cooperative interest and the value of the cooperative interest measured by the price at which
346 similar cooperative interests were readily obtainable in similar transactions, ~~but~~ however, a
347 disparity between the contract price and the value of the cooperative interest measured by the

348 price at which similar cooperative interests were readily obtainable in similar transactions does
349 not, of itself, render the contract unconscionable.

350 **Drafting note: Technical changes.**

351 | § ~~55-435~~ 55.1-xxx. Obligation of good faith.

352 Every contract or duty governed by this chapter imposes an obligation of good faith in
353 its performance or enforcement.

354 **Drafting note: No change.**

355 | § ~~55-436~~ 55.1-xxx. Remedies to be liberally administered.

356 A. The remedies provided by this chapter shall be liberally administered to the end that
357 the aggrieved party is put in ~~as good~~ a position as good as ~~if its position had~~ the other party ~~had~~
358 fully performed. However, consequential, special, or punitive damages may not be awarded
359 except as specifically provided in this chapter or by other rule of law.

360 B. Any right or obligation declared by this chapter is enforceable by judicial proceeding.

361 **Drafting note: Technical changes.**

362 | § ~~55-437~~. Repealed.

363 **Drafting note: Repealed by Acts 2015, c. 709, cl. 2.**

364 Article 2.

365 | Creation, Alteration, and Termination of Cooperatives.

366 **Drafting note: Existing Article 2, relating to the creation, alteration, and**
367 **termination of cooperatives, is retained as proposed Article 2.**

368 | § ~~55-438~~ 55.1-xxx. Creation of cooperative ownership.

369 A cooperative may be created pursuant to this chapter only by recording a declaration
370 executed in the same manner as a deed, and by conveying to the association the real estate
371 subject to that declaration. The declaration ~~must~~ shall be recorded in every ~~city or~~ county or city
372 in which any portion of the cooperative is located, ~~and must be~~ indexed in the grantee's index in
373 the name of the cooperative and the association, and indexed in the grantor's index in the name
374 of each person executing the declaration.

375 **Drafting note: Technical changes.**

376 § ~~55-439~~ 55.1-xxx. Unit boundaries.

377 Except as otherwise provided by the declaration:

378 1. If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring,
379 wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring; and any
380 other materials constituting any part of the finished surfaces ~~thereof of such walls, floors, or~~
381 ceilings, are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of
382 the common elements.

383 2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or ~~any~~ other
384 fixture lies partially within and partially outside of the designated boundaries of a unit, any
385 portion ~~thereof of such fixture~~ serving only that unit is a limited common element allocated
386 solely to that unit, and any portion ~~thereof of such fixture~~ serving more than one unit or any
387 portion of the common elements is a part of the common elements.

388 3. Subject to the provisions of ~~paragraph subdivision~~ 2, all spaces, interior partitions, and
389 other fixtures and improvements within the boundaries of a unit are a part of the unit.

390 4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, or patios
391 and all exterior doors and windows or other fixtures designed to serve a single unit, but located
392 outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

393 **Drafting note: Technical changes.**

394 § ~~55-440~~ 55.1-xxx. Construction and validity of declaration and bylaws.

395 A. All provisions of the declaration and bylaws are severable.

396 B. The rule against perpetuities ~~may shall~~ not be applied to defeat any provision of the
397 declaration, bylaws, or rules and regulations adopted pursuant to subdivision A 1 of § ~~55-459~~
398 55.1-xxx.

399 C. In the event of a conflict between the provisions of the declaration and the bylaws, the
400 declaration prevails except to the extent that the declaration is inconsistent with this chapter.

401 D. Title to a cooperative interest is not rendered unmarketable or otherwise affected by
402 reason of an insubstantial failure of the declaration to comply with this chapter. Whether a
403 substantial failure impairs marketability is not affected by this chapter.

404 **Drafting note: In subsection B, the word "may" is replaced with "shall" because**
405 **the phrase "may not" as used in this section expresses an absolute prohibition, which, to**
406 **be consistent throughout the Code, is more properly expressed by the phrase "shall not."**

407 **Technical changes are made.**

408 § ~~55-441~~ 55.1-xxx. Description of units.

409 A description of a unit ~~which that~~ sets forth the name of the cooperative, the recording
410 data for the declaration, the ~~city or~~ county or city in which the cooperative is located, and the
411 identifying number of the unit; is a legally sufficient description of that unit and all rights,
412 obligations, and interests appurtenant to that unit ~~which that~~ were created by the declaration or
413 bylaws.

414 **Drafting note: Technical changes.**

415 § ~~55-442~~ 55.1-xxx. Contents of declaration.

416 A. The declaration ~~must shall~~ contain:

417 1. The ~~names~~ name of the cooperative, which ~~must shall~~ include the word "cooperative"
418 or be followed by the words "a cooperative," and the association;

419 2. The name of every ~~city or~~ county or city in which any part of the cooperative is
420 situated;

421 3. A legally sufficient description of the real estate included in the cooperative;

422 4. A statement of the maximum number of units ~~which that~~ the declarant reserves the
423 right to create;

424 5. A description, which may be by plats or plans, of each unit created by the declaration,
425 including the unit's identifying number, its size or number of rooms, and its location within a
426 building if it is within a building containing more than one unit;

427 6. A description of any limited common elements, other than those specified in
428 ~~paragraphs subdivisions~~ 2 and 4 of § ~~55-439~~ 55.1-xxx;

429 7. A description of any real estate, except real estate subject to development rights,
430 ~~which that~~ may be allocated subsequently as limited common elements, other than limited
431 common elements specified in ~~paragraphs subdivisions~~ 2 and 4 of § ~~55-439~~ 55.1-xxx, together
432 with a statement that they may be so allocated;

433 8. A description of any development rights and other special declarant rights reserved by
434 the declarant, together with a legally sufficient description of the real estate to which each of
435 those rights applies, and a time limit within which each of those rights ~~must~~ are required to be
436 exercised;

437 9. If any development right may be exercised with respect to different parcels of real
438 estate at different times, a statement to that effect together with (i) either a statement fixing the
439 boundaries of those portions and regulating the order in which those portions may be subjected
440 to the exercise of each development right; or a statement that no assurances are made in those
441 regards; and (ii) a statement as to whether, if any development right is exercised in any portion
442 of the real estate subject to that development right, that development right ~~must~~ are required to
443 be exercised in all or in any other portion of the remainder of that real estate;

444 10. Any other conditions or limitations under which the rights described in ~~paragraph~~
445 subdivision 8 may be exercised or will lapse;

446 11. An allocation to each cooperative interest of the allocated interests in the manner
447 described in § ~~55-444~~ 55.1-xxx;

448 12. Any restrictions on (i) use and occupancy of the units; (ii) alienation of the
449 cooperative interests; and (iii) the amount for which a cooperative interest may be sold or the
450 amount that may be received by a proprietary lessee upon sale of, condemnation of, or casualty
451 loss to the unit or the cooperative or termination of the cooperative;

452 13. The recording data for recorded easements and licenses appurtenant to, or included
453 in, the cooperative or to which any portion of the cooperative is or may become subject by
454 virtue of a reservation in the declaration; and

455 14. All matters required by §§ ~~55-443~~ 55.1-xxx, ~~55-444~~ 55.1-xxx, ~~55-445~~ 55.1-xxx, ~~55-~~
456 ~~451~~ 55.1-xxx, ~~55-452~~ and 55.1-xxx and subsection D of § ~~55-460~~ 55.1-xxx.

457 B. The declaration may contain any other matters the declarant deems appropriate.

458 **Drafting note: Technical changes.**

459 § ~~55-443~~ 55.1-xxx. Leasehold cooperatives.

460 A. The expiration or termination of any lease ~~which~~ that may terminate the cooperative
461 or reduce its size, or a memorandum ~~thereof~~ of such lease, shall be recorded. The declaration
462 shall state:

463 1. The recording data for the lease or a statement of where the complete lease may be
464 inspected;

465 2. The date on which the lease is scheduled to expire;

466 3. A legally sufficient description of the real estate subject to the lease;

467 4. Any right of the proprietary lessees to redeem the reversion and ~~the manner whereby~~
468 how those rights may be exercised, or a statement that they do not have those rights;

469 5. Any right of the proprietary lessees to remove any improvements within a reasonable
470 time after the expiration or termination of the lease, or a statement that they do not have those
471 rights; and

472 6. Any rights of the proprietary lessees to renew the lease and the conditions, if any, of
473 any renewal, or a statement that they do not have those rights.

474 B. Acquisition of the leasehold interest of any proprietary lessee by the owner of the
475 reversion or remainder does not merge the leasehold and fee simple interests unless the
476 leasehold interests of all proprietary lessees subject to that reversion or remainder are acquired.

477 C. If the expiration or termination of a lease decreases the number of units in a
478 cooperative, the allocated interests shall be reallocated in accordance with subsection A of § ~~55-~~

479 ~~444~~ 55.1-xxx as though those units had been taken by eminent domain. Reallocations shall be
480 confirmed by an amendment to the declaration prepared, executed, and recorded by the
481 association.

482 **Drafting note: Technical changes.**

483 § ~~55-444~~ 55.1-xxx. Allocation of ownership interests, votes, and common expense
484 liabilities.

485 A. The declaration shall allocate an ownership interest in the association a fraction or
486 percentage of the common expenses of the association and a portion of the votes in the
487 association, or to each cooperative interest in the cooperative, and state the formulas used to
488 establish those allocations. Those allocations ~~may shall~~ not discriminate in favor of cooperative
489 interests owned by the declarant or an affiliate of the declarant.

490 B. If units may be added to or withdrawn from the cooperative, the declaration ~~must~~
491 shall state the formulas to be used to reallocate the allocated interests among all cooperative
492 interests included in the cooperative after the addition or withdrawal.

493 C. The declaration may provide: (i) that different allocations of votes shall be made to
494 the cooperative interests on particular matters specified in the declaration; (ii) for cumulative
495 voting only for the purpose of electing members of the executive board; and (iii) for class
496 voting on specified issues affecting the class if necessary to protect valid interests of the class. ~~A~~
497 No declarant ~~may not shall~~ utilize cumulative or class voting for the purpose of evading any
498 limitation imposed on declarants by this chapter, nor ~~may shall~~ cooperative interests constitute a
499 class because they are owned by a declarant.

500 D. Except for minor variations due to rounding, the sum of the common expense
501 liabilities allocated at any time to all the cooperative interests must equal ~~1~~ one if stated as a
502 fraction or 100 percent if stated as a percentage. In the event of a discrepancy between an
503 allocated interest and the result derived from application of the pertinent formula, the allocated
504 interest prevails.

505 | E. Any purported conveyance, encumbrance, judicial sale, or other voluntary or
506 | involuntary transfer of the ownership interest in the association made without the possessory
507 | interest in the unit to which that interest is related, is void.

508 | **Drafting note: In subsection C, the word "may" is replaced with "shall" because**
509 | **the phrase "may not" as used in this section expresses an absolute prohibition, which, to**
510 | **be consistent throughout the Code, is more properly expressed by the phrase "shall not."**

511 | **Technical changes are made.**

512 | § ~~55-445~~ 55.1-xxx. Limited common elements.

513 | A. Except for the limited common elements described in ~~paragraphs~~ subdivisions 2 and
514 | 4 of § ~~55-439~~ 55.1-xxx, the declaration shall specify to which ~~unit or of the~~ units each limited
515 | common element is allocated. That allocation may not be altered without the consent of the
516 | proprietary lessees whose units are affected.

517 | B. ~~Except as~~ Unless the declaration ~~otherwise~~ provides otherwise, a limited common
518 | element may be reallocated by an amendment to the declaration executed by the proprietary
519 | lessees between or among whose units the reallocation is made. The persons executing the
520 | amendment shall provide a copy ~~thereof~~ to the association, which shall record it. The
521 | amendment shall be recorded in the names of the parties and the cooperative.

522 | C. A common element not previously allocated as a limited common element ~~may shall~~
523 | not be so allocated except pursuant to provisions in the declaration made in accordance with
524 | subdivision A 7 of § ~~55-442~~ 55.1-xxx. The allocations shall be made by amendments to the
525 | declaration.

526 | **Drafting note: In subsection C, the word "may" is replaced with "shall" because**
527 | **the phrase "may not" as used in this section expresses an absolute prohibition, which, to**
528 | **be consistent throughout the Code, is more properly expressed by the phrase "shall not."**

529 | **Technical changes are made.**

530 | § ~~55-446~~ 55.1-xxx. Exercise of development rights.

531 A. To exercise any development right reserved under subdivision A 8 of § ~~55-442~~ 55.1-
532 xxx, the declarant shall prepare, execute, and record an amendment to the declaration as
533 specified in § ~~55-453~~ 55.1-xxx. The amendment to the declaration must assign an identifying
534 number to each new unit created, and, except in the case of subdivision or conversion of units
535 described in subsection B, reallocate the allocated interests among all cooperative interests. The
536 amendment must describe any common elements and any limited common elements ~~thereby~~
537 created by such amendment and, in the case of limited common elements, designate to which of
538 the ~~unit to which~~ units each is allocated to the extent required by § ~~55-445~~ 55.1-xxx.

539 B. Development rights may be reserved within any real estate added to the cooperative if
540 the amendment adding that real estate includes all matters required by § ~~55-442~~ 55.1-xxx or §
541 ~~55-443~~ 55.1-xxx, as ~~the case may be~~ appropriate. This provision does not extend the time limit
542 on the exercise of development rights imposed by the declaration pursuant to subdivision A 8 of
543 § ~~55-442~~ 55.1-xxx.

544 C. Whenever a declarant exercises a development right to subdivide or convert a unit
545 previously created into additional units, common elements, or both:

546 1. If the declarant converts the unit entirely to common elements, the amendment to the
547 declaration must reallocate all the allocated interests of the cooperative interest of which that
548 unit is a part among the other cooperative interests as if that unit had been taken by eminent
549 domain.

550 2. If the declarant subdivides the unit into two or more units, whether or not any part of
551 the unit is converted into common elements, the amendment to the declaration must reallocate
552 all the allocated interests of the cooperative interest of which that unit is a part among the
553 cooperative interests created by the subdivision in any reasonable manner prescribed by the
554 declarant.

555 D. If the declaration provides, pursuant to subdivision A 8 of § ~~55-442~~ 55.1-xxx, that all
556 of or a portion of the real estate is subject to the development right of withdrawal:

557 1. If all the real estate is subject to withdrawal, and the declaration does not describe
558 separate portions of real estate subject to that right, none of the real estate may be withdrawn
559 after a cooperative interest has been conveyed to a purchaser; and

560 2. If a portion or portions are subject to withdrawal, no portion may be withdrawn after a
561 cooperative interest in that portion has been conveyed to a purchaser.

562 **Drafting note: Technical changes.**

563 | § ~~55-447~~ 55.1-xxx. Alterations of units.

564 Subject to the provisions of the declaration and other provisions of law, a proprietary
565 lessee:

566 1. May make any improvements or alterations to his unit that do not impair the structural
567 integrity or the electrical or mechanical systems of any portion of the cooperative;

568 | 2. ~~May~~ Shall not change the appearance of the common elements, or the exterior
569 appearance of a unit or any other portion of the cooperative, other than the interior of the unit,
570 without permission of the association;

571 3. After acquiring a cooperative interest of which an adjoining unit or an adjoining part
572 of an adjoining unit is a part, may remove or alter any intervening partition or create apertures
573 therein, even if the partition in whole or in part is a common element, if those acts do not impair
574 the structural integrity or electrical or mechanical systems of any portion of the cooperative.
575 | Removal of partitions or creation of apertures under this ~~paragraph~~ subdivision is not an
576 alteration of boundaries.

577 **Drafting note: In subdivision 2, the word "may" is replaced with "shall" because**
578 **the phrase "may not" as used in this section expresses an absolute prohibition, which, to**
579 **be consistent throughout the Code, is more properly expressed by the phrase "shall not."**

580 **Technical change.**

581 | § ~~55-448~~ 55.1-xxx. Relocation of boundaries between adjoining units.

582 A. Subject to the provisions of the declaration and other provisions of law, the
583 boundaries between adjoining units may be relocated by an amendment to the declaration upon

584 application to the association by the proprietary lessees of those units. If the proprietary lessees
585 of the adjoining units have specified a reallocation between their cooperative interests of their
586 allocated interests, the application ~~must~~ shall state the proposed reallocations. Unless the
587 executive board determines within ~~thirty~~ 30 days that the reallocations are unreasonable, the
588 association shall prepare an amendment that identifies the units involved, states the
589 reallocations, is executed by those proprietary lessees, contains words of conveyance between
590 them, and upon recordation, is indexed in the name of the grantor and the grantee.

591 B. The association shall prepare and record amendments to the declaration, including
592 any plans necessary to show or describe the altered boundaries between adjoining units and their
593 sizes and identifying numbers. All costs for such preparation and recordation shall be borne by
594 the proprietary lessees involved.

595 **Drafting note: Technical changes.**

596 ~~§ 55-449~~ 55.1-xxx. Subdivision of units.

597 A. If the declaration expressly so permits, a unit may be subdivided into two or more
598 units. Subject to the provisions of the declaration and other provisions of law, upon application
599 of a proprietary lessee to subdivide a unit, the association shall prepare, execute, and record an
600 amendment to the declaration, subdividing that unit. All costs for such preparation, execution,
601 and recordation shall be borne by the proprietary lessees involved.

602 B. The amendment to the declaration must (i) be executed by the proprietary lessee of
603 the unit to be subdivided; (ii) assign an identifying number to each unit created; and (iii)
604 reallocate the allocated interests formerly allocated to the cooperative interest of which the
605 subdivided unit is a part to the new cooperative interests in any reasonable manner prescribed by
606 the proprietary lessee of the cooperative interest of which the subdivided unit is a part.

607 **Drafting note: Technical changes.**

608 ~~§ 55-450~~ 55.1-xxx. Easement for encroachments.

609 To the extent that any unit or common element encroaches on any other unit or common
610 element, a valid easement for the encroachment exists. The easement does not relieve a

611 proprietary lessee of liability in case of his willful misconduct ~~nor~~ or relieve a declarant or any
612 other person of liability for failure to adhere to any representation in the public offering
613 statement.

614 **Drafting note: Technical change.**

615 § ~~55-451~~ 55.1-xxx. Use for sales purposes.

616 A declarant may maintain sales offices, management offices, and models in units or on
617 common elements in the cooperative only if the declaration so provides and specifies the rights
618 of a declarant with regard to the number, size, location, and relocation ~~thereof~~ of such offices or
619 models. Any sales office, management office, or model not designated a unit by the declaration
620 is a common element, and if a declarant ceases to have an ownership interest in the association,
621 he ceases to have any rights with regard ~~thereto~~ to such offices or models, unless it is removed
622 promptly from the cooperative in accordance with a right to remove reserved in the declaration.
623 Subject to any limitations in the declaration, a declarant may maintain signs on the common
624 elements advertising the cooperative. The provisions of this section are subject to the provisions
625 of other state law and to local ordinances.

626 **Drafting note: Technical changes.**

627 § ~~55-452~~ 55.1-xxx. Easement rights.

628 Subject to the provisions of the declaration, a declarant has an easement through the
629 common elements as may be reasonably necessary for the purpose of discharging a declarant's
630 obligations or exercising special declarant rights, whether arising under this chapter or reserved
631 in the declaration.

632 **Drafting note: No change.**

633 § ~~55-453~~ 55.1-xxx. Amendment of declaration.

634 A. Except in cases of amendments that may be executed by a declarant under § ~~55-446~~
635 55.1-xxx, the association under § ~~55-430~~ 55.1-xxx, subsection C of § ~~55-443~~ 55.1-xxx,
636 subsection C of § ~~55-445~~ 55.1-xxx, subsection A of § ~~55-448~~ 55.1-xxx, or § ~~55-449~~ 55.1-xxx, or
637 certain proprietary lessees under subsection B of § ~~55-445~~ 55.1-xxx, subsection A of § ~~55-448~~

638 [55.1-xxx](#), subsection B of § ~~55-449~~ [55.1-xxx](#), or subsection B of § ~~55-454~~ [55.1-xxx](#) and except
639 as limited by subsection D, the declaration may be amended only by vote or agreement of
640 proprietary lessees of cooperative interests to which at least ~~two-thirds~~ [66 2/3 percent](#) of the
641 votes in the association are allocated, or ~~any a~~ larger ~~majority percentage if~~ the declaration ~~so~~
642 specifies. The declaration may specify a smaller ~~number percentage~~ only if all of the units are
643 restricted exclusively to nonresidential use.

644 B. No action to challenge the validity of an amendment adopted by the association
645 pursuant to this section may be brought more than one year after the amendment is recorded.

646 C. Every amendment to the declaration must be recorded in every ~~city or~~ county [or city](#)
647 in which any portion of the cooperative is located and is effective only upon recordation. An
648 amendment shall be indexed in the grantee's index in the name of the cooperative and the
649 association and in the grantor's index in the name of the parties executing the amendment.

650 D. The declaration may be amended to extend the time limit within which special
651 declarant rights imposed by the declaration pursuant to subdivision A 8 of § ~~55-442~~ [55.1-xxx](#)
652 may be exercised only by vote or agreement of proprietary lessees of cooperative interests to
653 which at least ~~two-thirds~~ [66 2/3 percent](#) of the votes in the association are allocated to
654 cooperative interests not owned by a declarant, or any larger percentage the declaration
655 specifies. Except to the extent expressly permitted or required by this subsection or other
656 provisions of this chapter, no amendment may create or increase special declarant rights,
657 increase the number of units, or change the boundaries of any unit, the allocated interests of a
658 cooperative interest, or the uses to which any unit is restricted, in the absence of unanimous
659 consent of the proprietary lessees.

660 E. If the time limit specified in the declaration for the creation of cooperative interests or
661 the exercise of special declarant rights has expired, with the approval of the persons entitled to
662 cast at least ~~two-thirds~~ [66 2/3 percent](#) of the votes in the association, other than any votes
663 allocated to cooperative interests owned by the declarant, or any larger percentage as the
664 declaration specifies, the declaration may be amended to (i) revive and reinstate any or all of the

665 expired rights to create additional cooperative interests and any or all of the expired special
666 declarant rights; and (ii) vest in any person, including the original declarant, any or all of the
667 powers, rights, privileges, and authority to which a declarant is entitled under this chapter
668 regarding the exercise of the revived and reinstated rights with respect to any parcel of real
669 estate that is a common element or any additional real estate that such amendment permits to be
670 added to the cooperative. In no event, however, shall any such amendment extend or renew a
671 period of declarant control of the association or provide a new period of declarant control.

672 F. Amendments to the declaration required by this chapter to be recorded by the
673 association shall be prepared, executed, recorded, and certified on behalf of the association by
674 any officer of the association designated for that purpose or, in the absence of such designation,
675 by the president of the association.

676 **Drafting note: In subsection A, the terms "majority" and "number" are replaced**
677 **with the word "percentage" for consistency with the language in subsections D and E.**
678 **Technical changes are made.**

679 § ~~55-454~~ 55.1-xxx. Termination of cooperative ownership.

680 A. Except in the case of a taking of all the units by eminent domain, or in the case of
681 foreclosure of a security interest against the entire cooperative ~~which~~ that has priority over the
682 declaration, cooperative ownership may be terminated only by agreement of proprietary lessees
683 of cooperative interests to which at least four-fifths of the votes in the association are allocated
684 or any larger percentage the declaration specifies. The declaration may specify a smaller
685 percentage only if all of the units in the cooperative are restricted exclusively to nonresidential
686 uses.

687 B. An agreement to terminate must be evidenced by the execution of a termination
688 agreement or ratification ~~thereof~~ of such agreement in the same manner as a deed by the
689 requisite number of proprietary lessees. The termination agreement must specify a date after
690 which the agreement will be void unless it is recorded before that date. A termination agreement

691 and all such ratifications ~~thereof~~ must be recorded in every ~~city or~~ county or city in which a
692 portion of the cooperative is situated and is effective only upon recordation.

693 C. The association, on behalf of the proprietary lessees, may contract for the sale of real
694 estate in the cooperative, but the contract is not binding until approved pursuant to subsections
695 A and B. ~~Thereafter~~ After such approval, the association has all powers necessary and
696 appropriate to effect the sale. Until the sale has been concluded, and the proceeds ~~thereof of~~
697 such sale are distributed, the association continues in existence with all powers it had before
698 termination. Except to the extent that any provisions in the declaration limit the amount that
699 may be received by a proprietary lessee upon termination, as set forth in subdivision A 12 of §
700 ~~55-442~~ 55.1-xxx, proceeds of the sale must be distributed to holders of liens against the
701 association and, against the cooperative interests and to proprietary lessees, all as their interests
702 may appear, in accordance with subsections D and E. Unless otherwise specified in the
703 termination agreement, as long as the association holds title to the real estate, each proprietary
704 lessee and his successors in interest have an exclusive right to occupancy of the portion of the
705 real estate that formerly constituted his unit. During the period of ~~that~~ such occupancy, each
706 proprietary lessee and his successors in interest remain liable for all assessments and other
707 obligations imposed on proprietary lessees by this chapter or the declaration.

708 D. Following termination of the cooperative, the proceeds of any sale of real estate,
709 together with the assets of the association, are held by the association as trustee for proprietary
710 lessees and holders of liens against the association and the cooperative interests, as their
711 interests may appear. The declaration may provide that all creditors of the association have
712 priority over any interests of proprietary lessees and creditors of proprietary lessees. ~~In that~~
713 ~~event~~ Where the declaration provides such a priority, following termination, creditors of the
714 association holding liens on the cooperative ~~which~~ that were recorded or docketed before
715 termination may enforce their liens in the same manner as any lienholder, and all other creditors
716 of the association are to be treated as if they had perfected liens against the cooperative

717 immediately before termination. Unless the declaration provides that all creditors of the
718 association have such priority:

719 | 1. The lien of each creditor of the association, ~~which that~~ was perfected against the
720 | association before termination, becomes a lien against each cooperative interest upon
721 | termination as of the date the lien was perfected;

722 | 2. All other creditors of the association are to be treated as if they had perfected liens
723 | against the cooperative interests immediately before termination;

724 | 3. The amounts of the liens of the association's creditors described in ~~paragraphs~~
725 | subdivisions 1 and 2 ~~above~~ against each of the cooperative interests must be proportionate to the
726 | ratio ~~which that~~ that cooperative interest's common expense liability bears to the common
727 | expense liability of all the cooperative interests;

728 | 4. The lien of each creditor of each proprietary lessee ~~which that~~ was perfected before
729 | termination continues as a lien against that proprietary lessee's cooperative interest as of the date
730 | the lien was perfected; and

731 | 5. The assets of the association shall be distributed to all proprietary lessees and all
732 | lienholders against their cooperative interests as their interests may appear in the order described
733 | above in subdivisions 1 through 4, and creditors of the association are not entitled to payment
734 | from any proprietary lessee in excess of the amount of the creditor's lien against that proprietary
735 | lessee's cooperative interest.

736 | E. The respective interests of proprietary lessees referred to in subsections C and D are
737 | as follows:

738 | 1. Except as provided in paragraph subdivision 2, the respective interests of proprietary
739 | lessees are the fair market values of their cooperative interests immediately before the
740 | termination, as determined by one or more independent appraisers selected by the association.
741 | Appraisers selected shall hold a designation awarded by a major, ~~nation-wide~~ nationwide testing
742 | or certifying professional appraisal society or association. The decision of the independent
743 | appraisers shall be distributed to the proprietary lessees and becomes final unless disapproved

744 within ~~thirty~~ 30 days after distribution by proprietary lessees of cooperative interests to which
745 ~~twenty-five~~ 25 percent of the votes in the association are allocated. The proportion of any
746 proprietary lessee's interest to that of all proprietary lessees is determined by dividing the fair
747 market value of that proprietary lessee's cooperative interest by the total fair market values of all
748 the cooperative interests.

749 2. If any unit or any limited common element is destroyed to the extent that an appraisal
750 of the fair market value ~~thereof~~ of the unit or limited common element before destruction cannot
751 be made, the interests of all proprietary lessees are their respective ownership interests in the
752 association immediately before the termination.

753 **Drafting note: Technical changes.**

754 § ~~55-455~~ 55.1-xxx. Rights of secured lenders.

755 The declaration may require that all or a specified number or percentage of the lenders
756 holding security interests encumbering the cooperative interests approve specified actions of the
757 proprietary lessees or the association as a condition to the effectiveness of those actions, but no
758 requirement for approval ~~may~~ shall operate to (i) deny or delegate control over the general
759 administrative affairs of the association by the proprietary lessees or the executive board; (ii)
760 prevent the association or the executive board from commencing, intervening in, or settling any
761 litigation or proceeding; or (iii) receive and distribute any insurance proceeds except pursuant
762 to § ~~55-470~~ 55.1-xxx.

763 **Drafting note: The word "may" is replaced with "shall" because the phrase "no**
764 **requirement for approval may" as used in this section expresses an absolute prohibition,**
765 **which, to be consistent throughout the Code, is more properly expressed by the phrase "no**
766 **requirement for approval shall." Technical changes are made.**

767 § ~~55-456~~ 55.1-xxx. Master associations.

768 A. If the declaration provides that any of the powers described in § ~~55-460~~ 55.1-xxx are
769 to be exercised by or may be delegated to a ~~profit for-profit~~ or nonprofit corporation or
770 unincorporated association ~~which~~ that exercises those or other powers on behalf of one or more

771 cooperatives or for the benefit of the proprietary lessees of one or more cooperatives, all
772 provisions of this chapter applicable to associations apply to any such corporation or
773 unincorporated association, except as modified by this section.

774 B. Unless a master association is acting in the capacity of an association described in §
775 ~~55-458~~ 55.1-xxx, it may exercise the powers set forth in subdivision A 2 of §~~55-459~~ 55.1-xxx
776 only to the extent expressly permitted in the declarations of the cooperatives ~~which~~ that are part
777 of the master association or expressly described in the delegations of power from those
778 cooperatives to the master association.

779 C. If the declaration of any cooperative provides that the executive board may delegate
780 certain powers to a master association, the members of the executive board have no liability for
781 the acts or omissions of the master association with respect to ~~those~~ the delegated powers
782 ~~expressly so delegated in accordance therewith.~~

783 D. The rights and responsibilities of proprietary lessees with respect to the association
784 set forth in §§ ~~55-460~~ 55.1-xxx, ~~55-465~~ 55.1-xxx, ~~55-466~~ 55.1-xxx, ~~55-467~~ 55.1-xxx, and ~~55-~~
785 ~~469~~ 55.1-xxx apply in the conduct of the affairs of a master association only to those persons
786 who elect the board of a master association, whether or not those persons are otherwise
787 proprietary lessees within the meaning of this chapter.

788 E. Notwithstanding the provisions of subsection F of §~~55-460~~ 55.1-xxx, with respect to
789 the election of the executive board of an association by all proprietary lessees after the period of
790 declarant control ends, and even if a master association is also an association as described in §
791 ~~55-458~~ 55.1-xxx, the certificate of incorporation or other instrument creating the master
792 association and the declaration of each cooperative, the powers of which are assigned by the
793 declaration or delegated to the master association, may provide that the executive board of the
794 master association must be elected after the period of declarant control in any of the following
795 ways:

796 1. All proprietary lessees of all cooperatives subject to the master association may elect
797 all members of that executive board.

798 2. All members of the executive boards of all cooperatives subject to the master
799 association may elect all members of that executive board.

800 3. All proprietary lessees of each cooperative subject to the master association may elect
801 specified members of that executive board.

802 4. All proprietary lessees of the executive board of each cooperative subject to the
803 master association may elect specified members of that executive board.

804 **Drafting note: Technical changes.**

805 § ~~55-457~~ 55.1-xxx. Merger or consolidation of cooperatives.

806 A. Any two or more cooperatives, by agreement of the proprietary lessees as provided in
807 subsection B, may be merged or consolidated into a single cooperative. In the event of a merger
808 or consolidation, unless the agreement otherwise provides, the resultant cooperative is, for all
809 purposes, the legal successor of all of the preexisting cooperatives. The operations and activities
810 of all associations of the preexisting cooperatives shall be merged or consolidated into a single
811 association, which shall hold all powers, rights, obligations, assets, and liabilities of all
812 preexisting associations.

813 B. An agreement of two or more cooperatives to merge or consolidate pursuant to
814 subsection A must be evidenced by an agreement prepared, executed, recorded, and certified by
815 the president of the association of each of the preexisting cooperatives following approval by
816 proprietary lessees of cooperative interests to which are allocated the percentage of votes in
817 each cooperative required to terminate that cooperative. Any such agreement must be recorded
818 in every ~~city or~~ county or city in which a portion of the cooperative is located and is not
819 effective until recorded.

820 C. Every merger or consolidation agreement must provide for the reallocation of the
821 allocated interests in the new association among the cooperative interests of the resultant
822 cooperative either (i) by stating the reallocations or the formulas upon which they are based or
823 (ii) by stating the percentage of overall allocated interest of the new cooperative ~~which that~~
824 allocated to all of the cooperative interests comprising each of the preexisting cooperatives and

825 providing that the portion of the percentages allocated to each cooperative interest formerly
826 comprising a part of the preexisting cooperative must be equal to the percentages of allocated
827 interests allocated to that cooperative interest by the declaration of the preexisting cooperative.

828 **Drafting note: Technical changes.**

829 Article 3.

830 Management of Cooperatives.

831 **Drafting note: Existing Article 3, relating to the management of cooperatives, is**
832 **retained as proposed Article 3.**

833 § ~~55-458~~ 55.1-xxx. Organization of the association.

834 An association must be organized no later than the date the first cooperative interest in
835 the cooperative is conveyed. The membership of the association at all times shall consist
836 exclusively of all the proprietary lessees or, following termination of the cooperative, of all
837 former proprietary lessees entitled to distributions of proceeds under § ~~55-454~~ 55.1-xxx or their
838 heirs, successors, or assigns. The association shall be organized as a stock or nonstock
839 corporation, trust, trustee, unincorporated association, or partnership.

840 **Drafting note: Technical changes.**

841 § ~~55-459~~ 55.1-xxx. Powers of the association.

842 A. Except as provided in subsection B, and subject to the provisions of the declaration,
843 the association, even if unincorporated, may:

844 1. Adopt and amend bylaws and rules and regulations;

845 2. Adopt and amend budgets for revenues, expenditures, and reserves and collect
846 assessments for common expenses from proprietary lessees;

847 3. Hire and discharge managing agents and other employees, agents, and independent
848 contractors;

849 4. Institute, defend, or intervene in litigation or administrative proceedings in its own
850 name on behalf of itself or two or more proprietary lessees on matters affecting the cooperative;

851 5. Make contracts and incur liabilities;

- 852 6. Regulate the use, maintenance, repair, replacement, and modification of common
853 elements;
- 854 7. Cause additional improvements to be made as a part of the common elements;
- 855 8. Acquire, hold, encumber, and convey in its own name any right, title, or interest to
856 real or personal property, but part of the cooperative may be conveyed, or all or part of the
857 cooperative may be subjected to, a security interest only pursuant to § ~~55-469~~ 55.1-xxx;
- 858 9. Grant easements, leases, licenses, and concessions through or over the common
859 elements;
- 860 10. Impose and receive any payments, fees, or charges for the use, rental, or operation of
861 the common elements, other than limited common elements described in ~~paragraphs~~
862 subdivisions 2 and 4 of § ~~55-439~~ 55.1-xxx, and for services provided to proprietary lessees;
- 863 11. Impose charges for late payment of assessments and, after notice and an opportunity
864 to be heard, levy fines not to exceed ~~fifty dollars~~ \$50 for each instance for violations of the
865 declaration, bylaws, and rules and regulations of the association;
- 866 12. Impose reasonable charges for the preparation and recordation of amendments to the
867 declaration, resale certificates required by § ~~55-484~~ 55.1-xxx, or statements of unpaid
868 assessments;
- 869 13. Provide for the indemnification of its officers and executive board and maintain
870 directors' and officers' liability insurance;
- 871 14. Assign its right to future income, including the right to receive common expense
872 assessments, but only to the extent the declaration expressly so provides;
- 873 15. Exercise any other powers conferred by the declaration or bylaws;
- 874 16. Exercise all other powers that may be exercised in ~~this the~~ the Commonwealth by legal
875 entities of the same type as the association; and
- 876 17. Exercise any other powers necessary and proper for the governance and operation of
877 the association.

878 B. The declaration ~~may shall~~ not impose limitations on the power of the association to
879 deal with the declarant ~~which that~~ are more restrictive than the limitations imposed on the power
880 of the association to deal with other persons.

881 **Drafting note: In subsection B, the word "may" is replaced with "shall" because**
882 **the phrase "may not" as used in this section expresses an absolute prohibition, which, to**
883 **be consistent throughout the Code, is more properly expressed by the phrase "shall not."**

884 **Technical changes are made.**

885 § ~~55-460~~ 55.1-xxx. Executive board members and officers.

886 A. Except as provided in the declaration, the bylaws, subsection B₂ or other provisions of
887 this chapter, the executive board may act in all instances on behalf of the association. In the
888 performance of their duties, the officers and members of the executive board are required to
889 exercise (i) ~~if appointed by the declarant,~~ the care required of fiduciaries of the proprietary
890 lessees if appointed by the declarant and (ii) ~~if elected by the proprietary lessees,~~ ordinary and
891 reasonable care if elected by the proprietary lessees.

892 B. The executive board may not act on behalf of the association to amend the
893 declaration;₂ to terminate the cooperative;₂ to elect members of the executive board, except as
894 provided in the declaration pursuant to subsection F₂; or to determine the qualifications, powers,₁
895 and duties or terms of office of executive board members. The executive board may fill
896 vacancies in its membership for the unexpired portion of any term.

897 C. Within 30 days after adoption of any proposed budget for the cooperative, the
898 executive board shall provide a summary of the budget to all the proprietary lessees and shall set
899 a date for a meeting of the proprietary lessees to consider ratification of the budget. Such
900 meeting shall be held not less than 14 nor more than 30 days after mailing of the summary. The
901 meeting place, date, and time shall be provided with the budget summary. Unless at that
902 meeting a majority of all the proprietary lessees or any larger vote specified in the declaration
903 reject the budget, the budget is ratified, whether or not a quorum is present. In the event the
904 proposed budget is rejected, the periodic budget last ratified by the proprietary lessees shall be

905 continued until such time as the proprietary lessees ratify a subsequent budget proposed by the
906 executive board.

907 D. Subject to subsection E, the declaration may provide for a period of declarant control
908 of the association, during which period a declarant, or persons designated by him, may appoint
909 and remove the officers and members of the executive board. Regardless of the period provided
910 in the declaration, a period of declarant control terminates no later than the earlier of: (i) 60 days
911 after conveyance of 75 percent of the cooperative interests ~~which that~~ may be created to
912 proprietary lessees other than a declarant; (ii) two years after all declarants have ceased to offer
913 cooperative interests for sale in the ordinary course of business; or (iii) two years after any
914 development right to add new units was last exercised. A declarant may voluntarily surrender
915 the right to appoint and remove officers and members of the executive board before termination
916 of that period, but in that event he may require, for the duration of the period of declarant
917 control, that specified actions of the association or executive board, as described in a recorded
918 instrument executed by the declarant, be approved by the declarant before they become
919 effective.

920 E. ~~Not No~~ later than 60 days after conveyance of 25 percent of the cooperative interests
921 ~~which that~~ may be created to proprietary lessees other than a declarant, at least one member and
922 ~~not less than at least~~ 25 percent of the members of the executive board must be elected by
923 proprietary lessees other than the declarant. ~~Not No~~ later than 60 days after conveyance of 50
924 percent of the cooperative interests ~~which that~~ may be created to proprietary lessees other than a
925 declarant, ~~not less than 33 1/3 percent at least one-third~~ of the members of the executive board
926 must be elected by proprietary lessees other than the declarant.

927 F. Unless the declaration provides for the selection of one or more independent members
928 of the executive board, no later than the termination of any period of declarant control, the
929 proprietary lessees shall elect an executive board of at least three members, at least a majority of
930 whom must be proprietary lessees. To the extent ~~that~~ the declaration so provides, the members
931 of the executive board appointed by the declarant may continue to serve out their terms, and the

932 declarant may continue to appoint a minority of the members of the executive board until all of
933 the development rights reserved by the declarant have been exercised or have expired. In
934 addition, the declaration may provide for the selection of one or more independent members of
935 the executive board, who are neither proprietary lessees nor affiliated directly or indirectly in
936 any way with the declarant, by a vote of two-thirds of the members of the executive board. The
937 executive board shall elect the officers. The executive board members and officers shall take
938 office upon election.

939 G. Notwithstanding any provision of the declaration or bylaws to the contrary, the
940 proprietary lessees, by a two-thirds vote of all persons entitled to vote at any meeting of the
941 proprietary lessees at which a quorum is present, may remove any member of the executive
942 board with or without cause, other than a member appointed by the declarant.

943 **Drafting note: Technical changes.**

944 § ~~55-461~~ 55.1-xxx. Transfer of special declarant rights.

945 A. No special declarant rights created or reserved under this chapter may be transferred
946 except by an instrument evidencing the transfer recorded in every ~~city or~~ county or city in which
947 any portion of the cooperative is located. The instrument is not effective unless executed by the
948 transferee.

949 B. Upon transfer of any special declarant right, the liability of a transferor declarant is as
950 follows:

951 1. A transferor is not relieved of any obligation or liability arising before the transfer and
952 remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does
953 not deprive any proprietary lessee of standing to maintain an action to enforce any obligation of
954 the transferor.

955 2. If a successor to any special declarant right is an affiliate of a declarant, the transferor
956 is jointly and severally liable with the successor for any obligations or liabilities of the successor
957 relating to the cooperative.

958 3. If a transferor retains any special declarant rights, but transfers other special declarant
959 rights to a successor who is not an affiliate of the declarant, the transferor is liable for any
960 obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to
961 the retained special declarant rights and arising after the transfer.

962 4. A transferor has no liability for any act or omission or any breach of a contractual or
963 warranty obligation arising from the exercise of a special declarant right by a successor
964 declarant who is not an affiliate of the transferor.

965 C. Unless otherwise provided in a security agreement, in case of foreclosure of a security
966 agreement, tax sale, judicial sale, sale by a trustee under a security agreement or sale under
967 receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States
968 Code, of any cooperative interests owned by a declarant or of real estate in a cooperative subject
969 to development rights:

970 1. A person acquiring all the cooperative interests or real estate being foreclosed or sold
971 shall succeed, but only upon his request, to all special declarant rights related to that property
972 held by that declarant or only to any rights reserved in the declaration pursuant to § ~~55-451~~
973 [55.1-xxx](#) and held by that declarant to maintain models, sales offices, and signs.

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

976 D. Upon foreclosure, tax sale, judicial sale, sale by a trustee under a security agreement,
977 or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the
978 United States Code, of all cooperative interests or real estate in a cooperative owned by a
979 declarant:

980 1. The declarant ceases to have any special declarant rights, and

981 2. The period of declarant control as provided in subsection D of § ~~55-460~~ [55.1-xxx](#)
982 terminates unless the judgment or instrument conveying title provides for transfer of all special
983 declarant rights held by that declarant to a successor declarant.

984 E. The liabilities and obligations of a person who succeeds to special declarant rights are
985 as follows:

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

988 2. A successor to any special declarant right, other than a successor described in
989 ~~paragraphs subdivision~~ 3 or 4, who is not an affiliate of a declarant, is subject to all obligations
990 and liabilities imposed by this chapter or the declaration:

991 a. On a declarant ~~which that~~ relate to his exercise or non-exercise of special declarant
992 rights; or

993 b. On his transferor, other than:

994 (1) Misrepresentations by any previous declarant;

995 (2) Warranty obligations on improvements made by any previous declarant, or made
996 before the cooperative was created;

997 (3) Breach of any fiduciary obligation by any previous declarant or his appointees to the
998 executive board; or

999 (4) Any liability or obligation imposed on the transferor as a result of the transferor's acts
1000 or omissions after the transfer.

1001 3. A successor to only a right reserved in the declaration to maintain models, sales
1002 offices, and signs pursuant to ~~§ 55-451~~ 55.1-xxx, if he is not an affiliate of a declarant, may not
1003 exercise any other special declarant right and is not subject to any liability or obligation as a
1004 declarant, except the obligation to provide a current public offering statement, any liability
1005 arising as a result ~~thereof of providing a public offering statement~~, and obligations under Article
1006 5 (~~§ 55-496~~ 55.1-xxx et seq.) ~~of this chapter~~.

1007 4. A successor to all special declarant rights held by his transferor who is not an affiliate
1008 of that declarant and who succeeded to those rights pursuant to a deed or other instrument of
1009 conveyance in lieu of foreclosure or a judgment or instrument conveying title to cooperative
1010 interests or real estate subject to development rights under subsection C, may declare his

1011 intention in a recorded instrument to hold those rights solely for transfer to another person.
1012 ~~Thereafter~~ After declaring such an intention in a recorded instrument, until transferring all
1013 special declarant rights to any person acquiring title to any cooperative interest or real estate
1014 subject to development rights owned by the successor, or until recording an instrument
1015 permitting exercise of all those rights, that successor may not exercise any of those rights other
1016 than any right held by his transferor to control the executive board in accordance with the
1017 provisions of subsection D of § ~~55-460~~ 55.1-xxx for the duration of any period of declarant
1018 control, and any attempted exercise of those rights is void. So long as a successor declarant may
1019 not exercise special declarant rights under this subsection, he is not subject to any liability or
1020 obligation as a declarant other than liability for his acts and omissions under subsection D of §
1021 ~~55-460~~ 55.1-xxx.

1022 F. Nothing in this section subjects any successor to a special declarant right to any
1023 claims against or other obligations of a transferor declarant, other than claims and obligations
1024 arising under this chapter or the declaration.

1025 **Drafting note: Technical changes.**

1026 § ~~55-462~~ 55.1-xxx. Termination of contracts and leases of declarant.

1027 If entered into before the executive board elected by the proprietary lessees pursuant to
1028 subsection F of § ~~55-460~~ 55.1-xxx takes office, (i) any management contract, employment
1029 contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease
1030 between the association and a declarant or an affiliate of a declarant, or (iii) any contract or
1031 lease that is not bona fide or was unconscionable to the proprietary lessees at the time entered
1032 into under the circumstances then prevailing, may be terminated without penalty by the
1033 association at any time after the executive board elected by the proprietary lessees pursuant to
1034 subsection F of § ~~55-460~~ 55.1-xxx takes office ~~upon not less than~~ after giving at least 90 days'
1035 notice to the other party. ~~Notwithstanding the foregoing~~ However, a management contract that is
1036 not unconscionable between an association directly or indirectly providing assisted living or
1037 nursing services to proprietary lessees and a declarant or an affiliate of a declarant may not be

1038 terminated while a member of the executive board appointed by the declarant continues to serve
1039 unless such termination is approved by a vote of a majority of the members of the executive
1040 board and a majority vote of the proprietary lessees, other than the declarant.

1041 This section does not apply to any proprietary lease or any lease the termination of
1042 which would terminate the cooperative or reduce its size, unless the real estate subject to that
1043 lease was included in the cooperative for the purpose of avoiding the right of the association to
1044 terminate a lease under this section. ~~Nor shall this~~ This section does not apply to any contract,
1045 incidental to the disposition of a cooperative interest, to provide to a proprietary lessee for the
1046 duration of such proprietary lessee's life, or for any term in excess of one year, nursing services,
1047 medical services, other health-related services, board and lodging, and care as necessary, or any
1048 combination of such services. The rule of property law known as the rule restricting
1049 unreasonable restraints on alienation shall not be applied to defeat any provision of the
1050 declaration, bylaws, or proprietary leases requiring that the proprietary lessees be parties to such
1051 contracts.

1052 **Drafting note: Technical changes.**

1053 § ~~55-463~~ 55.1-xxx. Bylaws.

1054 A. The bylaws of the association ~~must~~ shall provide for:

1055 1. The number of members of the executive board and the titles of the officers of the
1056 association;

1057 2. Election by the executive board of a president, treasurer, secretary, and any other
1058 officers of the association the bylaws specify;

1059 3. The qualifications, powers and duties, terms of office, and manner of electing and
1060 removing executive board members and officers and filling vacancies;

1061 4. Which, if any, of its powers and responsibilities the executive board or officers may
1062 delegate to other persons or to a managing agent;

1063 5. Which of its officers may prepare, execute, certify, and record amendments to the
1064 declaration on behalf of the association; and

1065 6. The method of amending the bylaws.

1066 B. Subject to the provisions of the declaration, the bylaws may provide for any other
1067 matters the association deems necessary and appropriate, including a provision for the
1068 arbitration of disputes or other means of alternative dispute resolution in accordance with
1069 subsection B of § ~~55-492~~ 55.1-xxx.

1070 **Drafting note: Technical changes.**

1071 § ~~55-464~~ 55.1-xxx. Upkeep of cooperative.

1072 A. Except to the extent otherwise provided by the declaration, by subsection B ~~hereof~~, or
1073 by subsection G of § ~~55-470~~ 55.1-xxx, the association is responsible for maintenance, repair,
1074 and replacement of the common elements, and each proprietary lessee is responsible for
1075 maintenance, repair, and replacement of his unit. Each proprietary lessee shall afford to the
1076 association and the other proprietary lessees, and to their agents or employees, access through
1077 his unit reasonably necessary for those purposes. If damage is inflicted on the common elements
1078 or on any unit through which access is taken, the proprietary lessee responsible for the damage,
1079 or the association if it is responsible, is liable for the prompt repair and all costs associated with
1080 the such repair ~~thereof~~.

1081 B. In addition to the liability that a declarant as a proprietary lessee has under this
1082 chapter, the declarant alone is liable for all expenses in connection with real estate subject to
1083 development rights. No other proprietary lessee and no other portion of the cooperative is
1084 subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any
1085 income or proceeds from real estate subject to development rights inures to the declarant.

1086 **Drafting note: Technical changes.**

1087 § ~~55-464.1~~ 55.1-xxx. Common elements; notice of pesticide application.

1088 Associations shall post notification of all pesticide applications in or upon the common
1089 elements. Such notice shall consist of conspicuous signs placed in or upon the common
1090 elements where the pesticide will be applied at least ~~forty-eight~~ 48 hours prior to the application.

1091 **Drafting note: Technical change.**

1092 | § ~~55-465~~ 55.1-xxx. Meetings.

1093 | A meeting of the association must be held at least once each year. Special meetings of
1094 | the association may be called by (i) the president, (ii) a majority of the executive board, ~~or by~~
1095 | ~~twenty~~ (iii) 20 percent, or any lower percentage if so specified in the bylaws, of the proprietary
1096 | lessees. ~~Not No~~ less than ~~ten nor 10 or~~ more than ~~sixty~~ 60 days in advance of any meeting, the
1097 | secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent
1098 | prepaid by United States mail to the mailing address of each unit or to any other mailing address
1099 | designated in writing by the proprietary lessee. The notice of any meeting ~~must~~ shall state the
1100 | time and place of the meeting and the items on the agenda including the general nature of any
1101 | proposed amendment to the declaration or bylaws, any budget changes, and any proposal to
1102 | remove a director or officer.

1103 | **Drafting note: Clause designations are added to the first sentence for clarity.**

1104 | **Technical changes are made.**

1105 | § ~~55-466~~ 55.1-xxx. Quorums.

1106 | A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of
1107 | the association if persons entitled to cast ~~twenty~~ 20 percent of the votes ~~which that~~ may be cast
1108 | for election of the executive board are present in person or by proxy at the beginning of the
1109 | meeting.

1110 | B. Unless the bylaws specify a larger percentage, a quorum is deemed present
1111 | throughout any meeting of the executive board if persons entitled to cast ~~fifty~~ 50 percent of the
1112 | votes on that board are present at the beginning of the meeting.

1113 | **Drafting note: Technical changes.**

1114 | § ~~55-467~~ 55.1-xxx. Voting; proxies.

1115 | A. If only one of the multiple proprietary lessees of a unit is present at a meeting of the
1116 | association, he is entitled to cast all the votes allocated to the cooperative interest of which that
1117 | unit is a part. If more than one of the multiple proprietary lessees are present, the votes allocated
1118 | to that cooperative interest may be cast only in accordance with the agreement of a majority in

1119 interest of the multiple proprietary lessees, unless the declaration expressly provides otherwise.
1120 There is majority agreement if any one of the multiple proprietary lessees casts the votes
1121 allocated to that cooperative interest without protest being made promptly to the person
1122 presiding over the meeting by any of the other proprietary lessees of the cooperative interest.

1123 B. Votes allocated to a cooperative interest may be cast pursuant to a proxy duly
1124 executed by a proprietary lessee. If there is more than one proprietary lessee of a unit, each
1125 proprietary lessee of the unit may vote or register protest to the casting of votes by the other
1126 proprietary lessees of the unit through a duly executed proxy. A proprietary lessee may not
1127 revoke a proxy given pursuant to this section except by actual notice of revocation to the person
1128 presiding over a meeting of the association. A proxy is void if it is not dated or purports to be
1129 revocable without notice. A proxy terminates one year after its date, unless ~~it specifies~~
1130 term is specified.

1131 C. If the declaration requires that votes on specified matters affecting the cooperative be
1132 cast by lessees other than proprietary lessees of leased units: (i) the provisions of subsections A
1133 and B apply to lessees as if they were proprietary lessees; (ii) proprietary lessees who have
1134 leased their units to other persons may not cast votes on those specified matters; and (iii) lessees
1135 are entitled to notice of meetings, access to records, and other rights respecting those matters as
1136 if they were proprietary lessees. Proprietary lessees must also be given notice, in the manner
1137 provided in ~~§ 55-465 55.1-xxx~~, of all meetings at which such lessees may be entitled to vote.

1138 D. All votes allocated to a cooperative interest owned by the association shall be deemed
1139 present for quorum purposes at all duly called meetings of the association and shall be deemed
1140 cast in the same proportions as the votes cast by proprietary lessees, other than the association.

1141 **Drafting note: Technical changes.**

1142 ~~§ 55-468 55.1-xxx~~. Tort and contract liability.

1143 Neither the association nor any proprietary lessee except the declarant is liable for that
1144 declarant's torts in connection with any part of the cooperative ~~which that~~ that declarant has the
1145 responsibility to maintain. Otherwise, an action alleging ~~a wrong done~~ wrongdoing by the

1146 association ~~must~~ shall be brought against the association and not against any proprietary lessee.
1147 If ~~the wrong such wrongdoing~~ occurred during any period of declarant control, and the
1148 association gives the declarant reasonable notice of and an opportunity to defend against the
1149 action, the declarant who then controlled the association is liable to the association or to any
1150 proprietary lessee: (i) for all tort losses not covered by insurance suffered by the association or
1151 that proprietary lessee, and (ii) for all costs ~~which~~ that the association would not have incurred
1152 but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable
1153 to the association under this section, the declarant is also liable for all litigation expenses,
1154 including reasonable ~~attorney's~~ attorney fees, incurred by the association. Any statute of
1155 limitation affecting the association's right of action under this section is tolled until the period of
1156 declarant control terminates.

1157 A proprietary lessee is not precluded from bringing an action contemplated by this
1158 subsection because he is a proprietary lessee or a member or officer of the association. Liens
1159 resulting from judgments against the association are governed by § ~~55-474~~ 55.1-xxx.

1160 **Drafting note: Technical changes.**

1161 § ~~55-469~~ 55.1-xxx. Conveyance or encumbrance of the cooperative.

1162 A. Part of the cooperative may be conveyed, and all or part of the cooperative may be
1163 subjected to a security interest, by the association if persons entitled to cast at least ~~eighty~~ 80
1164 percent of the votes in the association, including a simple majority of the votes allocated to
1165 cooperative interests not owned by a declarant, or any larger percentage the declaration
1166 specifies, agree to that action. If fewer than all the units or limited common elements are to be
1167 conveyed or subjected to a security interest, then all the proprietary lessees of those units, or the
1168 units to which those limited common elements are allocated, must agree in order to convey
1169 those units or limited common elements or subject them to a security interest. The declaration
1170 may specify a smaller percentage only if all of the units are restricted exclusively to
1171 nonresidential uses. Proceeds of the sale are an asset of the association.

1172 B. An agreement to convey a part of the cooperative or subject it to a security interest
1173 must be evidenced by the execution of an agreement, or ratifications ~~thereof~~ of such an
1174 agreement, in the same manner as a deed, by the requisite number of proprietary lessees. The
1175 agreement must specify a date after which the agreement will be void unless recorded before
1176 that date. The agreement and ~~all such~~ ratifications ~~thereof~~ must be recorded in every ~~city or~~
1177 county or city in which a portion of the cooperative is situated, and is effective only upon
1178 recordation.

1179 C. The association, on behalf of the proprietary lessees, may contract to convey a part of
1180 the cooperative or subject it to a security interest, but the contract is not enforceable against the
1181 association until approved pursuant to subsections A and B. ~~Thereafter~~ After such approval, the
1182 association has all powers necessary and appropriate to effect the conveyance or encumbrance
1183 including the power to execute deeds or other instruments.

1184 D. Any purported conveyance, encumbrance, or other voluntary transfer of the
1185 cooperative, unless made pursuant to this section or pursuant to subsection C of § ~~55-454~~ 55.1-
1186 xxx, is void.

1187 E. A conveyance or encumbrance of the cooperative pursuant to this section does not
1188 deprive any unit of its rights of access and support.

1189 **Drafting note: Technical changes.**

1190 § ~~55-470~~ 55.1-xxx. Insurance.

1191 A. Commencing not later than the time of the first conveyance of a cooperative interest
1192 to a person other than a declarant, the association shall maintain to the extent reasonably
1193 available:

1194 1. Property insurance on the common elements and units insuring against all risks of
1195 direct physical loss commonly insured against or, in the case of a conversion building, against
1196 fire and extended coverage perils. The total amount of insurance after application of any
1197 deductibles shall be not less than ~~eighty~~ 80 percent of the actual cash value of the insured

1198 property at the time the insurance is purchased and at each renewal date, exclusive of land,
1199 excavations, foundations, and other items normally excluded from property policies; and

1200 2. Liability insurance, including medical payments insurance, in an amount determined
1201 by the executive board but not less than any amount specified in the declaration, covering all
1202 occurrences commonly insured against for death, bodily injury, and property damage arising out
1203 of or in connection with the use, ownership, or maintenance of the common elements and units.

1204 B. If the insurance described in subsection A is not reasonably available, the association
1205 shall ~~cause notice of that fact to be~~ notify all proprietary lessees by hand ~~delivered~~ delivery or
1206 sent prepaid by United States mail ~~to all proprietary lessees,~~ sent prepaid. The declaration may
1207 require the association to carry any other insurance, and the association ~~in any event~~ may carry
1208 any other insurance it deems appropriate to protect the association or the proprietary lessees.

1209 C. Insurance policies carried pursuant to subsection A must provide that:

1210 1. Each proprietary lessee is an insured person under the policy with respect to liability
1211 arising out of his interest in the common elements or membership in the association;

1212 2. The insurer waives its right to subrogation under the policy against any proprietary
1213 lessee or member of his household;

1214 3. No act or omission by any proprietary lessee, unless acting within the scope of his
1215 authority on behalf of the association, will void the policy or be a condition to recovery under
1216 the policy; and

1217 4. If, at the time of a loss under the policy, there is other insurance in the name of a
1218 proprietary lessee covering the same risk covered by the policy, the association's policy provides
1219 primary insurance.

1220 D. Any loss covered by the property policy under subdivision A ~~1-of this section~~ must be
1221 adjusted with the association, but the insurance proceeds for that loss are payable to any
1222 insurance trustee designated for that purpose, or otherwise to the association, and not to any
1223 mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall
1224 hold any insurance proceeds in trust for the association, proprietary lessees, and lien holders as

1225 their interests may appear. Subject to the provisions of subsection G, the proceeds must be
1226 disbursed first for the repair or restoration of the damaged property. The association, proprietary
1227 lessees, and lien holders are not entitled to receive payment of any portion of the proceeds
1228 unless there is a surplus of proceeds after the property has been completely repaired or restored,
1229 or the cooperative is terminated.

1230 E. An insurance policy issued to the association does not prevent a proprietary lessee
1231 from obtaining insurance for his own benefit.

1232 F. An insurer that has issued an insurance policy under this section shall issue
1233 certificates or memoranda of insurance to the association and, upon written request, to any
1234 proprietary lessee or holder of a security interest. The insurer issuing the policy may not cancel
1235 or refuse to renew it until ~~thirty~~ 30 days after notice of the proposed cancellation or nonrenewal
1236 has been mailed to the association, each proprietary lessee and each holder of a security interest
1237 to whom a certificate or memorandum of insurance has been issued at their respective last
1238 known address.

1239 G. Any portion of the cooperative for which insurance is required under this section
1240 ~~which that~~ is damaged or destroyed shall be repaired or replaced promptly by the association
1241 unless: (i) the cooperative is terminated; (ii) repair or replacement would be illegal under any
1242 state or local health or safety statute or ordinance; or (iii) ~~eighty~~ 80 percent of the proprietary
1243 lessees, including every proprietary lessee of a unit or assigned limited common element ~~which~~
1244 that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of
1245 insurance proceeds and reserves is a common expense. If the entire cooperative is not repaired
1246 or replaced: (i) the insurance proceeds attributable to the damaged common elements must be
1247 used to restore the damaged area to a condition compatible with the remainder of the
1248 cooperative; and (ii) except to the extent that other persons will be distributees, the insurance
1249 proceeds attributable to units and limited common elements ~~which that~~ are not rebuilt must be
1250 distributed to the proprietary lessees of those units and the proprietary lessees of the units to
1251 which those limited common elements were allocated, or to lien holders, as their interests may

1252 appear, and the remainder of the proceeds must be distributed to all the proprietary lessees or
1253 lien holders, as their interests may appear, in proportion to the common expense liabilities of all
1254 the cooperative interests. If the proprietary lessees vote not to rebuild any unit, the allocated
1255 interests of the cooperative interest of which that unit is a part are automatically reallocated
1256 upon the vote as if the unit had been condemned under subsection A of § ~~55-430~~ 55.1-xxx, and
1257 the association shall promptly ~~shall~~ prepare, execute, and record an amendment to the
1258 declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, § ~~55-~~
1259 ~~454~~ 55.1-xxx governs the distribution of insurance proceeds if the cooperative is terminated.

1260 H. The provisions of this section may be varied or waived in the case of a cooperative
1261 whose units are all restricted to nonresidential use.

1262 **Drafting note: Technical changes.**

1263 § ~~55-471~~ 55.1-xxx. Assessments for common expenses.

1264 A. Until the association makes a common expense assessment, the declarant shall pay all
1265 common expenses. After any assessment has been made by the association, assessments must be
1266 made at least annually, based on a budget adopted at least annually by the association.

1267 B. Except for assessments under subsections C, D, E, and F, all common expenses ~~must~~
1268 shall be assessed against all the cooperative interests in accordance with the allocations set forth
1269 in the declaration pursuant to subsection A of § ~~55-444~~ 55.1-xxx.

1270 Any past due common expense assessment or installment ~~thereof~~ bears interest at the
1271 rate established by the association not exceeding ~~eighteen~~ 18 percent per year.

1272 C. To the extent required by the declaration:

1273 1. Any common expense associated with the maintenance, repair, or replacement of a
1274 limited common element must be assessed equally against the cooperative interests for the units
1275 to which that limited common element is assigned, ~~equally~~, or in any other proportion that the
1276 declaration provides;

1277 2. Any common expense or portion ~~thereof~~ benefiting fewer than all of the units must be
1278 assessed exclusively against the cooperative interests for the units benefited; and

1279 3. The costs of insurance must be assessed in proportion to risk, and the costs of utilities
1280 must be assessed in proportion to usage.

1281 D. Assessments to pay a judgment against the association may be made only against the
1282 cooperative interests in the cooperative at the time the judgment was entered, in proportion to
1283 their common expense liabilities.

1284 E. If any common expense is caused by the negligence or other misconduct of any
1285 proprietary lessee, or of his family members, tenants, or other invitees, the association may
1286 assess that expense exclusively against his cooperative interest.

1287 F. Notwithstanding any other provision in this section, in any cooperative where
1288 permanent residency is, in general, restricted to individuals age 55 and over, and the primary
1289 purpose of the association is to provide services and amenities to the residents of the cooperative
1290 that are consistent with the services and amenities typically provided to residents of full service
1291 senior housing communities in the United States, the declaration may provide, or may be
1292 amended to provide by vote or agreement of proprietary lessees of cooperative interests to
1293 which at least two-thirds of the votes in the association are allocated ~~(, or any larger majority~~
1294 percentage if so specified in the declaration ~~specifies~~), that:

1295 1. Common expenses may be assessed against all cooperative interests in accordance
1296 with the standards in general use from time to time among ~~full service~~ full-service senior
1297 housing communities in the United States for the purpose of fairly and equitably establishing the
1298 fees and charges imposed on their residents to pay for all common expenses of such senior
1299 housing communities, including the expenses of providing services and amenities, such
1300 standards to be determined by the executive board of the association, acting reasonably;

1301 2. Common expenses may be assessed against any cooperative interest ~~which that~~ has
1302 been created pursuant to the declaration but as to which construction of the unit appurtenant
1303 ~~thereto to such cooperative interest~~ thereto to such cooperative interest has not been completed; ~~provided;~~ that nothing contained
1304 ~~herein in this subdivision~~ herein in this subdivision shall relieve the declarant of its obligations under subsection B of §
1305 ~~55-464.55.1-xxx~~; and

1306 3. Common expenses may be assessed against any cooperative interest as to which the
1307 unit appurtenant ~~thereto~~ to such cooperative interest has been completed until the unit is initially
1308 permanently occupied; provided, however, that all such cooperative interests shall pay all direct
1309 expenses of the association related to such cooperative interests and any common expenses
1310 ~~which that~~ directly benefit such cooperative interest, in each case, determined in accordance
1311 with the provisions set forth in the declaration or the association's ~~by laws;~~ bylaws, provided,
1312 however, that if neither the declaration nor the ~~by laws~~ bylaws contain ~~provision therefor~~ such
1313 provisions, then such expenses shall be paid in accordance with the allocations set forth in the
1314 declaration pursuant to subsection A of § ~~55-444~~ 55.1-xxx.

1315 G. If common expense liabilities are reallocated, common expense assessments and any
1316 installment ~~thereof~~ not yet due shall be recalculated in accordance with the reallocated common
1317 expense liabilities.

1318 **Drafting note: Technical changes.**

1319 § ~~55-471.1~~ 55.1-xxx. Reserves for capital components.

1320 A. Except to the extent otherwise provided in the declaration and unless the declaration
1321 imposes more stringent requirements, the executive board shall:

1322 1. Conduct at least once every five years a study to determine the necessity and amount
1323 of reserves required to repair, replace, and restore the capital components;

1324 2. Review the results of that study at least annually to determine if reserves are
1325 sufficient; and

1326 3. Make any adjustments the executive board deems necessary to maintain reserves, as
1327 appropriate.

1328 B. To the extent that the reserve study conducted in accordance with this section
1329 indicates a need to budget for reserves, the association budget shall include ~~without limitations~~:

1330 1. The current estimated replacement cost, estimated remaining life, and estimated useful
1331 life of the capital components;

1332 2. As of the beginning of the fiscal year for which the budget is prepared, the current
1333 amount of accumulated cash reserves set aside to repair, replace, or restore the capital
1334 components and the amount of the expected contribution to the reserve fund for that fiscal year;
1335 and

1336 3. A general statement describing the procedures used for the estimation and
1337 accumulation of cash reserves pursuant to this section and the extent to which the association is
1338 funding its reserve obligations consistent with the study currently in effect.

1339 **Drafting note: In subsection B, the phrase "without limitation" is stricken**
1340 **following the term "include" on the basis of § 1-218, which states that throughout the**
1341 **Code "'Includes' means includes, but not limited to." Technical changes are made.**

1342 § ~~55-472~~ 55.1-xxx. Remedies for nonpayment of assessments.

1343 A. The association has a lien on a cooperative interest for any assessment levied against
1344 that cooperative interest or fines imposed against its owner from the time the assessment or fines
1345 become due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and
1346 interest charged pursuant to subdivisions A 11 and ~~A~~ 12 of § ~~55-459~~ 55.1-xxx are enforceable as
1347 assessments under this section. If an assessment is payable in installments, the full amount of
1348 the assessment is a lien from the time the first installment ~~thereof~~ becomes due. Upon
1349 nonpayment of the assessment, the proprietary lessee may be evicted in the same manner as
1350 provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may
1351 be foreclosed as provided by this section. The association's lien may be foreclosed: (i) by
1352 judicial sale in like manner as a mortgage on real estate; or (ii) by power of sale as provided in
1353 subsection I.

1354 B. A lien under this section is prior to all other liens and encumbrances on a cooperative
1355 interest except: (i) liens and encumbrances on the cooperative ~~which that~~ the association creates,
1356 assumes, or takes subject to; (ii) any first security interest encumbering only the cooperative
1357 interest of a proprietary lessee and perfected before the date on which the assessment sought to
1358 be enforced became delinquent; and (iii) liens for real estate taxes and other governmental

1359 assessments or charges against the cooperative or the cooperative interest. The lien is also prior
1360 to the security interests described in clause (ii) ~~above~~ to the extent of the common expense
1361 assessments based on the periodic budget adopted by the association pursuant to subsection A of
1362 § ~~55-459~~ which 55.1-xxx that would have become due in the absence of acceleration during the
1363 six months immediately preceding institution of an action to enforce the lien. This subsection
1364 does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other
1365 assessments made by the association. The lien under this section is not subject to homestead or
1366 other exemptions.

1367 C. Unless the declaration otherwise provides, if two or more associations have liens for
1368 assessments created at any time on the same property, those liens have equal priority.

1369 D. Recording of the declaration constitutes record notice and perfection of the lien. No
1370 further recordation or filing of any claim of lien for assessment under this section is required.

1371 E. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
1372 are instituted within three years after the full amount of the assessment becomes due.

1373 F. This section does not prohibit actions to recover sums for which subsection A creates
1374 a lien or prohibit an association from taking a transfer in lieu of foreclosure.

1375 G. A judgment or decree in any action brought under this section shall include costs and
1376 reasonable ~~attorney's~~ attorney fees for the prevailing party.

1377 H. ~~The~~ Upon written request, the association ~~upon written request~~ shall furnish to a
1378 proprietary lessee a statement setting forth the amount of unpaid assessments against his
1379 cooperative interest. The statement ~~must~~ shall be in recordable form. The statement ~~must~~ shall
1380 be furnished within ~~ten~~ 10 business days after receipt of the request and is binding on the
1381 association, the executive board, and every proprietary lessee.

1382 I. The association, upon nonpayment of assessments and compliance with this
1383 subsection, may sell the cooperative interest. Sale may be at a public sale or by private
1384 negotiation and at any time and place, but every aspect of the sale, including the method,
1385 advertising, time, place, and terms, must be reasonable. The association shall give to the

1386 proprietary lessee and any sublessees of the proprietary lessee reasonable written notice of the
1387 time and place of any public sale or, if a private sale is intended, of the intention of entering into
1388 a contract to sell and of the time after which a private disposition may be made. The same notice
1389 must also be sent to any other person who has a recorded interest in the cooperative interest
1390 ~~which~~ that would be cut off by the sale, but only if the interest was on record seven weeks
1391 before the date specified in the notice as the date of any public sale, or seven weeks before the
1392 date specified in the notice as the date after which a private sale may be made. The notices
1393 required by this subsection may be sent to any address reasonable in the circumstances. Sale
1394 may not be held until five weeks after the sending of the notice. The association may buy at any
1395 public sale, and, if the sale is conducted by a fiduciary or other person not related to the
1396 association, at a private sale.

1397 J. The proceeds of a sale under subsection I shall be applied in the following order:

1398 1. The reasonable expenses of sale;

1399 2. The reasonable expenses of securing possession before sale; holding, maintaining, and
1400 preparing the cooperative interest for sale, including payment of taxes and other governmental
1401 charges, premiums on hazard and liability insurance, and, to the extent provided for by
1402 agreement between the association and the proprietary lessee, reasonable ~~attorney's~~ attorney fees
1403 and other legal expenses incurred by the association;

1404 3. Satisfaction in the order of priority of any prior claims of record;

1405 4. Satisfaction of the association's lien;

1406 5. Satisfaction in the order of priority of any subordinate claim of record; and

1407 6. Remittance of any excess to the proprietary lessee. Unless otherwise agreed, the
1408 proprietary lessee is liable for any deficiency.

1409 K. If a cooperative interest is sold under subsection I, a good faith purchaser for value
1410 acquires the proprietary lessee's interest in the cooperative interest free of the association's debt
1411 ~~which~~ that gave rise to the lien under which the sale occurred and any subordinate interest, even
1412 though the association or other person conducting the sale failed to comply with the

1413 requirements of this section. The person conducting the sale under subsection I shall execute a
1414 conveyance to the purchaser sufficient to convey the cooperative interest ~~which~~ that states that
1415 the conveyance is executed by him, after a foreclosure by power of sale of the association's lien
1416 and that he has power to make the sale. Signature and title or authority of the person signing the
1417 conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the
1418 giving of the notices required by subsection I are sufficient proof of the facts recited and of his
1419 authority to sign. Further proof of authority is not required even though the association is named
1420 as grantee in the conveyance.

1421 L. At any time before the association has disposed of the cooperative interest or entered
1422 into a contract for its disposition under the power of sale, the proprietary lessee or the holder of
1423 any subordinate security interest may cure the proprietary lessee's default and prevent sale or
1424 other disposition by tendering the performance due under the security agreement, including any
1425 amounts due because of exercise of a right to accelerate, plus the reasonable expenses of
1426 proceeding to foreclosure incurred to the time of tender, including reasonable ~~attorney's~~ attorney
1427 fees of the creditor.

1428 **Drafting note: Technical changes.**

1429 § ~~55-473~~ 55.1-xxx. Other liens affecting the cooperative.

1430 A. Regardless of whether his cooperative interest is subject to the claims of the
1431 association's creditors, no property of a proprietary lessee other than his cooperative interest is
1432 subject to those claims.

1433 B. If the association receives notice of an impending foreclosure on all or any portion of
1434 the association's real estate, the association shall promptly transmit a copy of that notice to each
1435 proprietary lessee of a unit located within the real estate to be foreclosed. Failure of the
1436 association to transmit the notice does not affect the validity of the foreclosure.

1437 **Drafting note: No change.**

1438 § ~~55-473.1~~ 55.1-xxx. Limitation of assumption of debt and encumbrances.

1439 Unless approved by persons entitled to cast at least 80 percent of the votes in the
1440 association, including a simple majority of the votes allocated to cooperative interests not
1441 owned by a declarant or any larger percentage the declaration specifies; (i) the association shall
1442 not assume or take subject to any debt, inclusive of any principal and interest accrued thereon,
1443 incurred in the original acquisition, development, or construction of or the conversion of the
1444 cooperative in excess of the amounts disclosed in the public offering statement pursuant to § ~~55-~~
1445 ~~478~~ 55.1-xxx or § ~~55-479~~ 55.1-xxx, nor shall the cooperative or any proprietary lessee's interest
1446 be encumbered by a security interest for any greater amount incurred for such purposes, and (ii)
1447 the declarant ~~may shall~~ not amend the public offering statement to change the amounts disclosed
1448 after conveyance of the first unit to a proprietary lessee. ~~Notwithstanding the foregoing~~
1449 However, the amounts disclosed ~~may shall~~ not be subject to adjustment such that the association
1450 or the proprietary lessees are subjected to the construction or market risks of the declarant.

1451 **Drafting note: The word "may" is replaced with "shall" because the phrase "may**
1452 **not" as used in this section expresses an absolute prohibition, which, to be consistent**
1453 **throughout the Code, is more properly expressed by the phrase "shall not." Technical**
1454 **changes are made.**

1455 § ~~55-474~~ 55.1-xxx. Association records.

1456 The association shall keep financial records sufficiently detailed to enable the
1457 association to comply with § ~~55-484~~ 55.1-xxx. All financial and other records shall be made
1458 reasonably available for examination by any proprietary lessee and his authorized agents.

1459 **Drafting note: No change.**

1460 § ~~55-475~~ 55.1-xxx. Association as trustee.

1461 With respect to a third person dealing with the association in the association's capacity as
1462 a trustee, the existence of trust powers and their proper exercise by the association may be
1463 assumed without inquiry. A third person is not bound to inquire whether the association has
1464 power to act as trustee or is properly exercising trust powers. A third person, without actual
1465 knowledge that the association is exceeding or improperly exercising its powers, is fully

1466 protected in dealing with the association as if it possessed and properly exercised the powers it
1467 purports to exercise. A third person is not bound to assure the proper application of trust assets
1468 paid or delivered to the association in its capacity as trustee.

1469 **Drafting note: No change.**

1470 Article 4.

1471 Protection of Cooperative Purchasers.

1472 **Drafting note: Existing Article 4, relating to the protection of cooperative**
1473 **purchasers, is retained as proposed Article 4.**

1474 § ~~55-476~~ 55.1-xxx. Applicability; waiver.

1475 A. This article applies to all cooperative interests subject to this chapter, except as
1476 provided in subsection B or as modified or waived by agreement of purchasers of cooperative
1477 interests in a cooperative in which all units are restricted to nonresidential use.

1478 B. Neither a public offering statement nor a resale certificate need be prepared or
1479 delivered in the case of:

1480 1. A gratuitous disposition of a cooperative interest;

1481 2. A disposition pursuant to court order;

1482 3. A disposition by a government or governmental agency;

1483 4. A disposition by foreclosure or transfer in lieu of foreclosure;

1484 5. A disposition to a person in the business of selling cooperative interests who intends
1485 to offer those cooperative interests to purchasers; or

1486 6. A disposition that may be canceled at any time and for any reason by the purchaser
1487 without penalty.

1488 **Drafting note: No change.**

1489 § ~~55-477~~ 55.1-xxx. Liability for public offering statement; requirements.

1490 A. Except as provided in subsection B, a declarant, prior to the offering of any
1491 cooperative interest to the public, shall prepare a public offering statement conforming to the
1492 requirements of §§ ~~55-478~~ 55.1-xxx, ~~55-479~~ 55.1-xxx, ~~55-480~~ 55.1-xxx, and ~~55-481~~ 55.1-xxx.

1493 B. A declarant may transfer responsibility for preparation of all or a part of the public
1494 offering statement to a successor declarant or to a person in the business of selling cooperative
1495 interests who intends to offer cooperative interests in the cooperative for his own account. In the
1496 event of any such transfer, the transferor shall provide the transferee with any information
1497 necessary to enable the transferee to fulfill the requirements of subsection A.

1498 C. Any declarant or other person in the business of selling cooperative interests who
1499 offers a cooperative interest for his own account to a purchaser shall deliver a public offering
1500 statement in the manner prescribed in subsection A of § ~~55-483~~ 55.1-xxx. The person who
1501 prepared all or a part of the public offering statement is liable under §§ ~~55-483~~ 55.1-xxx, ~~55-492~~
1502 55.1-xxx, ~~55-500~~ 55.1-xxx, and ~~55-501~~ 55.1-xxx for any false or misleading statement set forth
1503 ~~therein in such public offering statement~~ or for any omission of material fact ~~therefrom~~ from
1504 such public offering statement with respect to that portion of the public offering statement
1505 ~~which that~~ he prepared. If a declarant did not prepare any part of a public offering statement that
1506 he delivers, he is not liable for any false or misleading statement set forth ~~therein in such public~~
1507 offering statement or for any omission of material fact ~~therefrom~~ from such public offering
1508 statement unless he had actual knowledge of the statement or omission or, in the exercise of
1509 reasonable care, should have known of the statement or omission.

1510 D. If a unit is part of a cooperative and is part of any other real estate regime in
1511 connection with the sale of which the delivery of a public offering statement is required under
1512 the laws of ~~this the~~ Commonwealth, a single public offering statement, conforming to the
1513 requirements of §§ ~~55-478~~ 55.1-xxx, ~~55-479~~ 55.1-xxx, ~~55-480~~ 55.1-xxx, and ~~55-481~~ 55.1-xxx
1514 as those requirements relate to each regime in which the unit is located, and to any other
1515 requirements imposed under the laws of ~~this the~~ Commonwealth, may be prepared and delivered
1516 in lieu of providing two or more public offering statements.

1517 **Drafting note: Technical changes.**

1518 § ~~55-478~~ 55.1-xxx. Public offering statement; general provisions.

1519 | A. Except as provided in subsection B, a public offering statement ~~must~~ shall contain or
1520 | fully and accurately disclose:

1521 | 1. The name and principal address of the declarant and of the cooperative;

1522 | 2. A general description of the cooperative, including to the extent possible, the types,
1523 | number, declarant's schedule of commencement, and completion of construction of buildings,
1524 | and amenities that the declarant anticipates including in the cooperative;

1525 | 3. The number of units in the cooperative;

1526 | 4. Copies and a brief narrative description of the significant features of the declaration
1527 | and any other recorded covenants, conditions, restrictions, and reservations affecting the
1528 | cooperative; the bylaws and any rules or regulations of the association; copies of any contracts
1529 | and leases to be signed by purchasers at closing; and a brief narrative description of any
1530 | contracts or leases that will or may be subject to cancellation by the association under § ~~55-462~~
1531 | 55.1-xxx;

1532 | 5. Any current balance sheet and a projected budget for the association, either within or
1533 | as an exhibit to the public offering statement, for one year after the date of the first conveyance
1534 | to a purchaser, and thereafter the current budget of the association, a statement of who prepared
1535 | the budget, and a statement of the budget's assumptions concerning occupancy and inflation
1536 | factors. The budget ~~must~~ shall include, ~~without limitation~~:

1537 | a. A description of provisions made in the budget for reserves for repairs and
1538 | replacement;

1539 | b. A statement of any other reserves;

1540 | c. The projected common expense assessment by category of expenditures for the
1541 | association;

1542 | d. The projected monthly common expense assessment for each type of unit; and

1543 | e. The projected debt, inclusive of principal and any accrued interest, loan fees, and
1544 | other similar charges, assumed or to be assumed by the association and an estimate of the
1545 | payments necessary to service such debt.

1546 6. Any services not reflected in the budget that the declarant provides, or expenses that
1547 he pays and that he expects may become at any subsequent time a common expense of the
1548 association, and the projected common expense assessment attributable to each of those services
1549 or expenses for the association and for each type of unit;

1550 7. Any initial or special fee due from the purchaser at closing, together with a description
1551 of the purpose and method of calculating the fee;

1552 8. A description of any liens, defects, or encumbrances on or affecting the title to the
1553 cooperative;

1554 9. A description of any financing offered or arranged by the declarant;

1555 10. The terms and significant limitations of any warranties provided by the declarant,
1556 including statutory warranties and limitations on the enforcement thereof of such warranties or
1557 on damages;

1558 11. A statement that:

1559 a. Within 10 days after receipt of a public offering statement a purchaser, before
1560 conveyance, may cancel any contract for purchase of a cooperative interest from a declarant;
1561 and

1562 b. If a declarant fails to provide a public offering statement to a purchaser before
1563 conveying a cooperative interest, that purchaser may recover from the declarant 10 percent of
1564 the sales price of the cooperative interest, plus 10 percent of the share, proportionate to his
1565 common expense liability, of the indebtedness of the association secured by mortgages or deeds
1566 of trust encumbering the cooperative; ~~and~~

1567 12. A statement of any unsatisfied judgments or pending suits against the association;
1568 and the status of any pending suits material to the cooperative of which a declarant has actual
1569 knowledge;

1570 13. A statement that any deposit made in connection with the purchase of a cooperative
1571 interest will be held in an escrow account until closing and will be returned to the purchaser if

1572 | the purchaser cancels the contract pursuant to § ~~55-483~~ 55.1-xxx, together with the name and
1573 | address of the escrow agent;

1574 | 14. Any restrictions on: (i) use and occupancy of the units; (ii) alienation of the
1575 | cooperative interests; ~~or~~ (iii) the amount for which a cooperative interest may be sold; ~~or~~ ~~on~~ (iv)
1576 | the amount that may be received by a proprietary lessee upon sale, condemnation, or casualty
1577 | loss to the unit or the cooperative or termination of the cooperative;

1578 | 15. A description of the insurance coverage provided for the benefit of proprietary
1579 | lessees;

1580 | 16. Any current or expected fees or charges to be paid by proprietary lessees for the use
1581 | of the common elements and other facilities related to the cooperative;

1582 | 17. The extent to which financial arrangements have been provided for completion of all
1583 | improvements labeled "MUST BE BUILT" pursuant to § ~~55-494~~ 55.1-xxx;

1584 | 18. A brief narrative description of any zoning and other land use requirements affecting
1585 | the cooperative;

1586 | 19. A specified or maximum amount, if any, of acquisition, development, or construction
1587 | debt, inclusive of principal and any accrued interest, loan fees, and other similar charges,
1588 | assumed or to be assumed by the association and whether there will be a security interest
1589 | encumbering the cooperative to secure repayment;

1590 | 20. All unusual and material circumstances, features, and characteristics of the
1591 | cooperative and the units;

1592 | 21. Whether the proprietary lessees will be entitled, for federal, state, and local income
1593 | tax purposes, to a pass-through of deductions for payments made by the association for real
1594 | estate taxes and interest paid the holder of a security interest encumbering the cooperative; and

1595 | 22. A statement as to the effect on every proprietary lessee if the association fails to pay
1596 | real estate taxes or payments due the holder of a security interest encumbering the cooperative.

1597 | B. If a cooperative composed of not more than three units is not subject to any
1598 | development rights, and no power is reserved to a declarant to make the cooperative part of a

1599 larger cooperative, a group of cooperatives, or other real estate, a public offering statement may,
1600 ~~but need not~~ include, the information otherwise required by subdivisions A 9, ~~A~~ and 10, ~~A~~ and
1601 15 through ~~A~~ 19 and the narrative descriptions of documents required by subdivision A 4.

1602 C. A declarant promptly shall amend the public offering statement to report any material
1603 change in the information required by this section.

1604 D. The declarant shall provide a copy of the public offering statement and all
1605 amendments ~~thereto~~ to the association, and the association shall maintain them in its records.

1606 **Drafting note: In subdivision A 5, the phrase "without limitation" is stricken after**
1607 **the term "include" on the basis of § 1-218, which states that throughout the Code**
1608 **"'Includes' means includes, but not limited to." Technical changes are made.**

1609 § ~~55-479~~ 55.1-xxx. Public offering statement; cooperatives subject to development
1610 rights.

1611 If the declaration provides that a cooperative is subject to any development rights, the
1612 public offering statement ~~must~~ shall disclose, in addition to the information required by § ~~55-~~
1613 ~~478~~ 55.1-xxx:

1614 1. The maximum number of units and the maximum number of units per acre that may
1615 be created;

1616 2. A statement of how many or what percentage of the units ~~which that~~ may be created
1617 will be restricted exclusively to residential use, or a statement that no representations are made
1618 regarding use restrictions;

1619 3. If any of the units that may be built within real estate subject to development rights
1620 are not to be restricted exclusively to residential use, a statement, with respect to each portion of
1621 that real estate, of the maximum percentage of the real estate areas and the maximum percentage
1622 of the floor areas of all units that may be created therein, that are not restricted exclusively to
1623 residential use;

1624 4. A brief narrative description of any development rights reserved by a declarant and of
1625 any conditions relating to or limitations upon the exercise of development rights;

1626 5. A statement of the maximum extent to which each cooperative interest's allocated
1627 interests may be changed by the exercise of any development right described in ~~paragraph~~
1628 subdivision 4;

1629 6. A statement of the extent to which any buildings may be erected or other
1630 improvements that may be ~~erected~~ made pursuant to any development right in any part of the
1631 cooperative will be compatible with existing buildings and improvements in the cooperative in
1632 terms of architectural style, quality of construction, and size, or a statement that no assurances
1633 are made in those regards;

1634 7. General descriptions of all other improvements that may be made, and limited
1635 common elements that may be created within any part of the cooperative pursuant to any
1636 development right reserved by the declarant, or a statement that no assurances are made in that
1637 regard;

1638 8. A statement of any limitations as to the locations of any building or other
1639 improvement that may be made within any part of the cooperative pursuant to any development
1640 right reserved by the declarant, or a statement that no assurances are made in that regard;

1641 9. A statement that any limited common elements created pursuant to any development
1642 right reserved by the declarant will be of the same general types and sizes as the limited
1643 common elements within other parts of the cooperative, ~~or~~ a statement of the types and sizes
1644 planned, or a statement that no assurances are made in that regard;

1645 10. A statement that the proportion of limited common elements to units created
1646 pursuant to any development right reserved by the declarant will be approximately equal to the
1647 proportion existing within other parts of the cooperative, ~~or~~ a statement of any other assurances
1648 in that regard, or a statement that no assurances are made in that regard;

1649 11. A statement that all restrictions in the declaration affecting use and occupancy of
1650 units and alienation of cooperative interests will apply to any units and cooperative interests
1651 created pursuant to any development right reserved by the declarant, a statement of any

1652 differentiations that may be made as to those units and cooperative interests, or a statement that
1653 no assurances are made in that regard;

1654 12. A specified or maximum amount, if any, of acquisition, development, or construction
1655 debt, inclusive of principal and any accrued interest, loan fees, and other similar charges,
1656 assumed or to be assumed by the association for each phase of the development and whether
1657 there will be a security interest encumbering the cooperative to secure repayment. If no such
1658 amount can be specified, a statement that no amount may be assumed unless approved by
1659 persons entitled to cast at least 80 percent of the votes in the association, including a simple
1660 majority of the votes allocated to cooperative interests not owned by a declarant, or any larger
1661 percentage the declaration specifies; and

1662 13. A statement of the extent to which any assurances made pursuant to this section
1663 apply or do not apply in the event that any development right is not exercised by the declarant.

1664 **Drafting note: Technical changes.**

1665 § ~~55-480~~ 55.1-xxx. Public offering statement; ~~time-shares~~ time-shares.

1666 If the declaration provides that ownership of cooperative interests or occupancy of any
1667 units is or may be in ~~time-shares~~ time-shares, the public offering statement shall disclose, in
1668 addition to the information required by § ~~55-478~~ 55.1-xxx:

- 1669 1. The number and identity of units in which ~~time-shares~~ time-shares may be created;
- 1670 2. The total number of ~~time-shares~~ time-shares that may be created;
- 1671 3. The minimum duration of any ~~time-shares~~ time-shares that may be created; and
- 1672 4. The extent to which the creation of ~~time-shares~~ time-shares will or may affect the
1673 enforceability of the association's lien for assessments provided in § ~~55-473~~ 55.1-xxx.

1674 **Drafting note: Technical changes.**

1675 § ~~55-481~~ 55.1-xxx. Public offering statement; cooperatives containing conversion
1676 building.

1677 A. ~~The~~ In addition to the information required by § 55.1-xxx, the public offering
1678 statement of a cooperative containing any conversion building ~~must~~ shall contain, ~~in addition to~~
1679 ~~the information required by § 55-478:~~

1680 1. A statement by the declarant, based on a report prepared by an independent, registered
1681 architect or engineer, describing the present condition of all structural components and
1682 mechanical and electrical installations material to the use and enjoyment of the building;

1683 2. A statement by the declarant of the expected useful life of each item reported on in
1684 paragraph subdivision 1, or a statement that no representations are made in that regard; and

1685 3. A list of any outstanding notices of uncured violations of building code or other
1686 municipal regulations, together with the estimated cost of curing those violations.

1687 B. This section applies only to buildings containing units that may be occupied for
1688 residential use.

1689 **Drafting note: Technical changes.**

1690 § ~~55-482~~ 55.1-xxx. Public offering statement; cooperative securities.

1691 If an interest in a cooperative is currently registered with the Securities and Exchange
1692 Commission of the United States, a declarant satisfies all requirements relating to the
1693 preparation of a public offering statement of this chapter if he delivers to the purchaser and files
1694 with the agency a copy of the public offering statement filed with the Securities and Exchange
1695 Commission. A cooperative interest is not a security under the provisions of the Securities Act,
1696 §§ 13.1-501 through 13.1-527.3.

1697 **Drafting note: No change.**

1698 § ~~55-483~~ 55.1-xxx. Purchaser's right to cancel.

1699 A. A person required to deliver a public offering statement pursuant to subsection C of §
1700 ~~55-477~~ 55.1-xxx shall provide a purchaser with a copy of the public offering statement and all
1701 amendments ~~thereto~~ to the public offering statement before conveyance of that cooperative
1702 interest and not later than the date of any contract of sale. The purchaser may cancel the contract
1703 within ~~ten~~ 10 days after signing the contract.

1704 B. If a purchaser elects to cancel a contract pursuant to subsection A, he may do so by
1705 hand delivering notice ~~thereof of such cancellation~~ to the offeror or by mailing notice ~~thereof of~~
1706 ~~such cancellation~~ by prepaid United States mail to the offeror or to his agent for service of
1707 process. Cancellation is without penalty, and all payments made by the purchaser before
1708 cancellation shall be refunded promptly.

1709 C. If a person required to deliver a public offering statement pursuant to subsection C of
1710 § ~~55-477~~ 55.1-xxx fails to provide to a purchaser, to whom a cooperative interest is conveyed
1711 ~~with~~ that public offering statement and all amendments ~~thereto~~ as required by subsection A, the
1712 purchaser, in addition to any rights to damages or other relief, is entitled to receive from that
1713 person an amount equal to ~~ten~~ 10 percent of the sales price of the cooperative interest, plus ~~ten~~
1714 10 percent of the share, proportionate to his common expense liability, of the indebtedness of
1715 the association secured by mortgages or deeds of trust encumbering the cooperative. Execution
1716 of a purchase agreement for a cooperative interest ~~which that~~ makes reference to the public
1717 offering statement and ~~wherein in which~~ the purchaser acknowledges receipt ~~thereof of the~~
1718 ~~public offering statement~~ shall be sufficient proof that the declarant has fully satisfied this
1719 requirement.

1720 **Drafting note: Technical changes.**

1721 § ~~55-484~~ 55.1-xxx. Resales of cooperative interests.

1722 A. Except in the case of a sale where delivery of a public offering statement is required,
1723 or unless exempt under subsection B of § ~~55-476~~ 55.1-xxx, a proprietary lessee shall furnish to a
1724 purchaser before execution of any contract for sale of a cooperative interest, or otherwise before
1725 conveyance, a copy of the declaration, the bylaws, the rules ~~or and~~ regulations of the
1726 association, and a certificate containing:

1727 1. A statement disclosing the effect on the proposed disposition of any right of first
1728 refusal or other restraint on the free alienability of the cooperative interest;

1729 2. A statement setting forth the amount of the monthly common expense assessment and
1730 any unpaid common expense or special assessment currently due and payable from the selling
1731 proprietary lessee;

1732 3. A statement of any other fees payable by proprietary lessees;

1733 4. A statement of any capital expenditures anticipated by the association for the current
1734 and next two succeeding fiscal years;

1735 5. The current reserve study report or a summary ~~thereof~~ of such report and a statement
1736 of the status and amount of any reserve or replacement fund and of any portions of those
1737 reserves designated by the association for any specified projects;

1738 6. The most recent regularly prepared balance sheet and income and expense statement,
1739 if any, of the association, including the amount of any debt owed by the association or to be
1740 assumed by the association, inclusive of principal and any accrued interest, loan fees, and other
1741 similar charges;

1742 7. The current operating budget of the association;

1743 8. A statement of any unsatisfied judgments against the association and the status of any
1744 pending suits in which the association is a defendant;

1745 9. A statement describing any insurance coverage provided for the benefit of proprietary
1746 lessees;

1747 10. A statement as to whether the executive board has knowledge that any alterations or
1748 improvements to the unit or to the limited common elements assigned ~~thereto~~ to such unit
1749 violate any provision of the declaration;

1750 11. A statement as to whether the executive board has knowledge of any violations of
1751 the health or building codes with respect to the unit, the limited common elements assigned
1752 ~~thereto~~ to such unit, or any other portion of the cooperative;

1753 12. A statement of the remaining term of any leasehold estate affecting the cooperative
1754 and the provisions governing any extension or renewal ~~thereof~~ of such leasehold;

1755 13. Except where no public offering statement was prepared, a statement that the public
1756 offering statement and any amendments ~~thereto~~ to the public offering statement are records of
1757 the association available for inspection by the purchaser;

1758 14. An accountant's statement, if any was prepared, as to the deductibility for federal
1759 income taxes purposes by the proprietary lessee of real estate taxes and interest paid by the
1760 association;

1761 15. A statement of any restrictions in the declaration affecting the amount that may be
1762 received by a proprietary lessee upon sale, condemnation, or loss to the unit or the cooperative
1763 on termination of the cooperative; and

1764 16. Certification, if applicable, that the proprietary lessees' association has filed with the
1765 Common Interest Community Board the annual report required by § ~~55-504.1~~ 55.1-xxx; ~~which~~
1766 such certification shall indicate the filing number assigned by the Common Interest Community
1767 Board and the expiration date of such filing.

1768 B. The association, within 10 days after a request by a proprietary lessee, shall furnish a
1769 certificate containing the information necessary to enable the proprietary lessee to comply with
1770 this section. A proprietary lessee providing a certificate pursuant to subsection A is not liable to
1771 the purchaser for any erroneous information provided by the association and included in the
1772 certificate.

1773 C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set
1774 forth in the certificate prepared by the association. A proprietary lessee is not liable to a
1775 purchaser for the failure or delay of the association to provide the certificate in a timely manner,
1776 but the purchase contract is voidable by the purchaser until ~~the certificate has been provided and~~
1777 for five days thereafter after the certificate is provided or until conveyance, whichever occurs
1778 first ~~occurs~~.

1779 **Drafting note: Technical changes.**

1780 § ~~55-485~~ 55.1-xxx. Escrow of deposits.

1781 A. Any deposit made in connection with the purchase or reservation of a cooperative
1782 interest from a person required to deliver a public offering statement pursuant to subsection C of
1783 § ~~55-477~~ 55.1-xxx shall be placed in escrow and held either in ~~this the~~ Commonwealth or in the
1784 state ~~where in which~~ the unit ~~which that~~ is a part of that cooperative interest is located in an
1785 account designated solely for that purpose by a title insurance company, attorney₂ or real estate
1786 broker licensed under the laws of ~~this the~~ Commonwealth, an independent bonded escrow
1787 company₂ or an institution whose accounts are insured by a governmental agency or
1788 instrumentality until: (i) delivered to the declarant at closing₂; (ii) delivered to the declarant
1789 because of purchaser's default under a contract to purchase the cooperative interest₂; or (iii)
1790 refunded to the purchaser.

1791 B. Any deposit made in connection with the purchase of a cooperative interest from a
1792 person not required to deliver a public offering statement shall be placed in escrow in the same
1793 manner as prescribed in subsection A ~~of this section~~. Upon receipt of the certificate called for in
1794 § ~~55-484~~ 55.1-xxx, should the purchaser elect to void the contract, the seller may deduct the
1795 actual charges by the association for preparation of the certificate. Otherwise, the deposit shall
1796 be promptly returned to the purchaser.

1797 **Drafting note: Technical changes.**

1798 § ~~55-486~~ 55.1-xxx. Release of liens.

1799 A. In the case of a sale of a cooperative interest where delivery of a public offering
1800 statement is required pursuant to subsection C of § ~~55-477~~ 55.1-xxx, a seller shall, before
1801 conveying a cooperative interest, record or furnish to the purchaser releases of all liens affecting
1802 the unit ~~which that~~ is a part of that cooperative interest and any limited common element
1803 assigned ~~thereto to such unit~~, except liens solely against the unit and any limited common
1804 element assigned ~~thereto to such unit~~, ~~which that~~ the purchaser expressly agrees to take subject
1805 to or assume. Releases of liens shall be made pursuant to §§ ~~55-66.3~~ 55.1-xxx through ~~55-66.6~~
1806 55.1-xxx. This subsection does not apply to any real estate ~~which that~~ a declarant has the right to
1807 withdraw.

1808 B. Before conveying real estate to the association, the declarant shall have that real
1809 estate released from: (i) all liens the foreclosure of which would deprive proprietary lessees of
1810 any right of access to or easement of support of their units; and (ii) all other liens on ~~that~~ such
1811 real estate unless the public offering statement describes certain real estate ~~which~~ that may be
1812 conveyed subject to liens in specified amounts.

1813 **Drafting note: Technical changes.**

1814 § ~~55-487~~ 55.1-xxx. Conversion buildings.

1815 A. For the purposes of this section:

1816 "Disabled" means suffering from a severe, chronic physical or mental impairment that
1817 results in substantial functional limitations.

1818 "Elderly" means not less than 62 years of age.

1819 B. A declarant of a cooperative containing conversion buildings shall give each of the
1820 tenants of a conversion building formal notice of the conversion at the time the cooperative is
1821 registered by the ~~agency~~ Common Interest Community Board. This notice shall advise each
1822 tenant of (i) the offering price of the cooperative interests for the unit he occupies; (ii) the
1823 projected common expense assessments against that cooperative interest for at least the first
1824 year of the cooperative's operation; (iii) any relocation services, public or private, of which the
1825 declarant is aware; (iv) any measure taken or to be taken by the declarant to reduce the
1826 incidence of tenant dislocation; and (v) the details of the relocation plan, if any is provided by
1827 the declarant, to assist tenants in relocating. No tenant or subtenant may be required to vacate
1828 upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that
1829 disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not
1830 be altered during that period. Until the expiration of the 120-day period, the declarant shall have
1831 no right of access to the unit except as provided ~~herein~~ in this section and in subsection A of §
1832 ~~55-248.18 and~~ 55.1-xxx except that, upon 45 days' written notice to the tenant, the declarant
1833 may enter the unit in order to make additional repairs, decorations, alterations, or improvements,
1834 provided ~~(i)~~ (a) the making of the same does not constitute an actual or constructive

1835 | eviction of the tenant; and ~~(ii)~~ (b) such entry is made either with the consent of the tenant or
1836 | only at times when the tenant is absent from the unit. Failure to give notice as required by this
1837 | section is a defense to an action for possession. The declarant shall also provide general notice
1838 | to the tenants of the cooperative or proposed cooperative at the time of application to the ~~agency~~
1839 | Common Interest Community Board, in addition to the formal notice required by this
1840 | subsection.

1841 | B-C. For 60 days after delivery or mailing of the formal notice described in subsection
1842 | A, the person required to give the notice shall offer to convey the cooperative interest for each
1843 | unit or proposed unit occupied for residential use to the tenant who leases the unit associated
1844 | with that cooperative interest. A specific statement of the purchase price and the amount of any
1845 | initial or special cooperative fee due from the purchaser on or before settlement of the purchase
1846 | contract and the basis of such fee shall be given to the tenant. If a tenant fails to purchase the
1847 | cooperative interest during that 60-day period, the offeror ~~may shall~~ not offer to dispose of an
1848 | interest in that cooperative interest during the following 180 days at a price or on terms more
1849 | favorable to the offeree than the price or terms offered to the tenant. This subsection does not
1850 | apply to any cooperative interest in a conversion building if the unit ~~which that~~ is part of that
1851 | cooperative interest will be restricted exclusively to nonresidential use or the boundaries of the
1852 | converted unit do not substantially conform to the dimensions of the residential unit before
1853 | conversion.

1854 | C-D. If a seller, in violation of subsection B-C, conveys a cooperative interest to a
1855 | purchaser for value who has no knowledge of the violation, that conveyance extinguishes any
1856 | right a tenant may have under subsection B-C to purchase that cooperative interest if the deed
1857 | states that the seller has complied with subsection B-C but does not affect the right of a tenant
1858 | to recover damages from the seller for a violation of subsection B-C.

1859 | D-E. If a notice of conversion specifies a date by which a unit or proposed unit must be
1860 | vacated, and otherwise complies with the provisions of §§ ~~55-248.6~~ 55.1-xxx and ~~55-248.15~~
1861 | 55.1-xxx, the notice also constitutes a notice to vacate as specified by §§ ~~55-222~~ 55.1-xxx, ~~55-~~

1862 [248-6 55.1-xxx](#), and ~~55-248.15~~ [55.1-xxx](#). The details of the relocation plan, if any is provided by
1863 the declarant for assisting tenants in relocating, shall also be provided to the tenant.

1864 ~~E. F.~~ Any ~~county, city or town~~ [locality](#) may require by ordinance that the declarant of a
1865 conversion cooperative file with that governing body all information ~~which is~~ required by the
1866 [agency Common Interest Community Board](#) pursuant to § ~~55-498~~ [55.1-xxx](#) and a copy of the
1867 formal notice required by subsection A. Such information shall be filed with that governing
1868 body when the application for registration is filed with the ~~agency Common Interest Community~~
1869 [Board](#), and such copy of the formal notice shall be filed with that governing body whenever it is
1870 sent to tenants. No fee shall be imposed for such filings with a governing body.

1871 ~~F. G.~~ The governing body of any county utilizing the urban county executive form of
1872 optional government (§§ 15.2-800 through 15.2-858) or the county manager plan of optional
1873 government (§§ 15.2-702 through 15.2-749), or of any city or town adjoining any such county,
1874 may require by ordinance that the declarant of any residential cooperative containing conversion
1875 buildings converted from multi-family rental use shall reimburse any tenant displaced by the
1876 conversion for amounts actually expended to relocate as a result of such dislocation. The
1877 reimbursement shall not be required to exceed the amount ~~to which~~ [that](#) the tenant would have
1878 been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the
1879 condominium had been condemned by the Department of Highways and Transportation.

1880 ~~G. H.~~ Any ~~county, city or town~~ [locality](#) may require by ordinance that elderly or disabled
1881 tenants, occupying as their residence up to ~~twenty~~ [20](#) percent of the apartments or units in a
1882 cooperative containing conversion buildings at the time of issuance of the general notice
1883 required by subsection ~~A hereof~~ [B](#), be offered leases or extensions of leases on the apartments or
1884 units they occupy or on other apartments or units of at least equal size and overall quality for up
1885 to three years beyond the date of such notice.

1886 The terms and conditions ~~thereof of such leases or extensions of leases~~ shall be as agreed
1887 upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be

1888 in excess of reasonable rent for comparable apartments or units in the same market area as such
1889 conversion building.

1890 Such leases or extensions shall not be required, however, in the case of any apartments
1891 or units ~~which that~~ will, in the course of the conversion, be substantially altered in physical
1892 layout, restricted exclusively to nonresidential use, or be converted in such a manner as to
1893 require relocation of the tenant in premises outside of the project being converted.

1894 ~~H. For the purposes of this section:~~

1895 ~~"Agency" means the Common Interest Community Board.~~

1896 ~~"Disabled" means suffering from a severe, chronic physical or mental impairment which~~
1897 ~~results in substantial functional limitations.~~

1898 ~~"Elderly" means not less than 62 years of age.~~

1899 I. Nothing in this section permits termination of a lease by a declarant in violation of its
1900 terms.

1901 **Drafting note: The definitions in existing subsection H are relocated to proposed**
1902 **subsection A. The definition of "agency" is deleted and the Common Interest Community**
1903 **Board is referred to by its full name throughout the section for consistency with changes**
1904 **made throughout the chapter. In proposed subsections F and H, the phrase "county, city**
1905 **or town" is replaced with "locality" on the basis of § 1-221, which states that throughout**
1906 **the Code "'Locality' means a county, city, or town as the context may require." Technical**
1907 **changes are made.**

1908 § ~~55-488~~ 55.1-xxx. Express warranties of quality.

1909 A. Express warranties made by any seller to a purchaser of a cooperative interest, if
1910 relied upon by the purchaser, are created as follows:

1911 1. Any affirmation of fact or promise ~~which that~~ relates to the unit, its use, or rights
1912 appurtenant ~~thereto to such unit~~, area improvements to the cooperative that would directly
1913 benefit the unit, or the right to use or have the benefit of facilities not located in the cooperative;

1914 creates an express warranty that the unit and related rights and uses will conform to the
1915 affirmation or promise;

1916 2. Any model or description of the physical characteristics of the cooperative, including
1917 plans and specifications of or for improvements, creates an express warranty that the
1918 cooperative will conform to the model or description;

1919 3. Any description of the quantity or extent of the real estate comprising the cooperative,
1920 including plats or surveys, creates an express warranty that the cooperative will conform to the
1921 description, subject to customary tolerances; and

1922 4. A provision that a buyer of a cooperative interest may put a unit ~~which~~ that is part of
1923 that cooperative interest only to a specified use is an express warranty that the specified use is
1924 lawful.

1925 B. Neither formal words, such as "warranty" or "guarantee," nor a specific intention to
1926 make a warranty is necessary to create an express warranty of quality, but a statement
1927 purporting to be merely an opinion or commendation of the real estate or its value does not
1928 create a warranty.

1929 C. Any conveyance of a cooperative interest transfers to the purchaser all express
1930 warranties of quality made by previous sellers.

1931 **Drafting note: Technical change.**

1932 ~~§ 55-489~~ 55.1-xxx. Implied warranties of quality.

1933 A. A declarant and any person in the business of selling cooperative interests for his own
1934 account warrant that a unit will be in at least as good condition at the earlier of the time of the
1935 conveyance of a cooperative interest or delivery of possession as it was at the time of
1936 contracting, reasonable wear and tear excepted.

1937 B. A declarant and any person in the business of selling cooperative interests for his own
1938 account impliedly warrant that a unit and the common elements in the cooperative are suitable
1939 for the ordinary uses of real estate of its type and that any improvements made or contracted for
1940 by him or made by any person before the creation of the cooperative, will be:

1941 1. Free from defective materials; and
1942 2. Constructed in accordance with applicable law, according to sound engineering and
1943 construction standards, and in a workmanlike manner.

1944 C. In addition, a declarant and any person in the business of selling cooperative interests
1945 for his own account warrant to a purchaser of a cooperative interest for a unit that may be used
1946 for residential use that an existing use, continuation of which is contemplated by the parties,
1947 does not violate applicable law at the earlier of the time of conveyance or delivery of
1948 possession.

1949 D. Warranties imposed by this section may be excluded or modified as specified in ~~§ 55-~~
1950 ~~490~~ [55.1-xxx](#).

1951 E. For purposes of this section, improvements made or contracted for by an affiliate of a
1952 declarant are made or contracted for by the declarant.

1953 F. Any conveyance of a cooperative interest transfers to the purchaser all of the
1954 declarant's implied warranties of quality.

1955 **Drafting note: Technical changes.**

1956 ~~§ 55-490~~ [55.1-xxx](#). Exclusion or modification of implied warranties of quality.

1957 A. Except as limited by subsection B with respect to a purchaser of a cooperative interest
1958 for a unit that may be used for residential use, implied warranties of quality: (i) may be excluded
1959 or modified by agreement of the parties; and (ii) are excluded by expression of disclaimer, such
1960 as "as is," "with all faults," or other language ~~which~~ [that](#) in common understanding calls the
1961 buyer's attention to the exclusion of warranties.

1962 B. With respect to a purchaser of a cooperative interest for a unit that may be occupied
1963 for residential use, no general disclaimer of implied warranties of quality is effective, nor shall
1964 any disclaimer of implied warranties of quality be effective as to defects in materials or
1965 construction as to any unit, brought to the attention of the declarant within two years from the
1966 date of the first conveyance of the cooperative interest associated with such unit, or as to any
1967 such defect in the common elements brought to the attention within two years (i) after that

1968 common element has been completed or, if later, (ii) after the first cooperative interest has been
1969 conveyed in the cooperative. The first conveyance of a cooperative interest associated with a
1970 unit situated in real estate subject to development rights shall be treated as the first conveyance
1971 of a cooperative interest in the cooperative for the purposes of the preceding sentence as to any
1972 such defects in the common elements within that real estate. A declarant₂ and any person in the
1973 business of selling cooperative interests for his own account₂ may disclaim liability in an
1974 instrument signed by the purchaser for a specified defect or specified failure to comply with
1975 applicable law, if the defect or failure entered into became a part of the basis of the bargain.

1976 **Drafting note: Technical changes.**

1977 § ~~55-494~~ 55.1-xxx. Statute of limitations for warranties.

1978 A. A judicial proceeding for breach of any obligation arising under § ~~55-488~~ 55.1-xxx or
1979 § ~~55-489~~ 55.1-xxx must be commenced within six years after the cause of action accrues, but
1980 the parties may agree to reduce the period of limitation to not less than two years. With respect
1981 to a unit that may be occupied for residential use, an agreement to reduce the period of
1982 limitation must be evidenced by a separate instrument executed by the purchaser of the
1983 cooperative interest for that unit.

1984 B. Subject to subsection C, a cause of action for breach of warranty of quality, regardless
1985 of the purchaser's lack of knowledge of the breach, accrues:

1986 1. As to a unit, at the time the purchaser to whom the warranty is first made enters into
1987 possession if a possessory interest was conveyed, or at the time of acceptance of the instrument
1988 of conveyance if a nonpossessory interest was conveyed; and

1989 2. As to each common element, at the time the common element is completed or, if
1990 later₂, (i) as to a common element that may be added to the cooperative or portion ~~thereof~~ of the
1991 cooperative, at the time the first cooperative interest for a unit ~~therein~~ in such cooperative
1992 interest is conveyed to a bona fide purchaser₂; or (ii) as to a common element within any other
1993 portion of the cooperative, at the first time a cooperative interest in the cooperative is conveyed
1994 to a bona fide purchaser.

1995 C. If a warranty of quality explicitly extends to future performance or duration of any
1996 improvement or component of the cooperative, the cause of action accrues at the time the breach
1997 is discovered or at the end of the period for which the warranty explicitly extends, whichever is
1998 earlier.

1999 **Drafting note: Technical changes.**

2000 § ~~55-492~~ 55.1-xxx. Effect of violation on rights of action; ~~attorney's~~ attorney fees;
2001 arbitration of disputes.

2002 A. If a declarant or any other person subject to this chapter fails to comply with any
2003 provision ~~hereof of this chapter~~ or any provision of the declaration ~~of~~ or bylaws, any person or
2004 class of persons adversely affected by the failure to comply has a claim for appropriate relief.
2005 Punitive damages may be awarded for a willful failure to comply with this chapter. The court, in
2006 an appropriate case, may award reasonable ~~attorney's~~ attorney fees.

2007 B. A declaration may provide for the arbitration of disputes or other means of alternative
2008 dispute resolution. Any such arbitration held in accordance with this subsection shall be
2009 consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.
2010 The place of any such arbitration or alternative dispute resolution shall be held in the county or
2011 city in which the development is located or as mutually agreed by the parties.

2012 **Drafting note: Technical changes are made.**

2013 § ~~55-493~~ 55.1-xxx. Labeling of promotional material.

2014 No promotional material may be displayed or delivered to prospective purchasers ~~which~~
2015 that describes or portrays improvements that are not in existence, unless the description or
2016 portrayal of the improvement in the promotional ~~material~~ is conspicuously labeled or
2017 identified either as "MUST BE BUILT" or "NEED NOT BE BUILT."

2018 **Drafting note: Technical changes.**

2019 § ~~55-494~~ 55.1-xxx. Declarant's obligation to complete and restore.

2020 A. The declarant shall complete all improvements depicted on any site plan or other
2021 graphic representation included in the public offering statement or in any promotional material
2022 distributed by or for the declarant unless that improvement is labeled "NEED NOT BE BUILT."

2023 B. The declarant is subject to liability for the prompt repair and restoration, to a
2024 condition compatible with the remainder of the cooperative, of any portion of the cooperative
2025 affected by the exercise of rights reserved pursuant to or created by §§ ~~55-446~~ 55.1-xxx, ~~55-447~~
2026 55.1-xxx, ~~55-448~~ 55.1-xxx, ~~55-449~~ 55.1-xxx, ~~55-451~~ 55.1-xxx, and ~~55-452~~ 55.1-xxx.

2027 **Drafting note: No change.**

2028 § ~~55-495~~ 55.1-xxx. Substantial completion of units.

2029 In the case of a sale of a cooperative interest where delivery of a public offering
2030 statement is required, a contract of sale may be executed, but no interest in that cooperative
2031 interest may be conveyed, except pursuant to subsection B of § ~~55-498~~ 55.1-xxx, until the
2032 declaration is recorded and the unit ~~which~~ that is a part of that cooperative interest is
2033 substantially completed, as evidenced by a recorded certificate of substantial completion
2034 executed by an independent, registered architect, surveyor, or engineer, or by issuance of a
2035 certificate of occupancy authorized by law.

2036 **Drafting note: Technical changes.**

2037 Article 5.

2038 Administration and Registration of Cooperatives.

2039 **Drafting note: Existing Article 5, relating to the administration and registration of**
2040 **cooperative, is retained as proposed Article 5. Existing § 55-502 is relocated to the**
2041 **beginning of Article 5 so that the powers and duties of the Common Interest Community**
2042 **Board are logically placed near § 55.1-xxx [§ 55-496], which states that the Common**
2043 **Interest Community Board is the administrative agency for this chapter.**

2044 § ~~55-496~~ 55.1-xxx. ~~Administrative agency~~ Common Interest Community Board.

2045 This chapter shall be administered by the Common Interest Community Board, ~~which~~
2046 ~~herein is called the "agency."~~

2047 **Drafting note: Throughout the article, the Common Interest Community Board is**
2048 **referred to by its full name because the Common Interest Community Board falls under**
2049 **the purview of the Department of Professional and Occupational Regulation, a state**
2050 **agency, and so the term "agency" was unnecessarily confusing and inaccurate.**

2051 § ~~55-502~~ 55.1-xxx. General powers and duties of ~~agency~~ the Common Interest
2052 Community Board.

2053 A. The ~~agency~~ Common Interest Community Board may adopt, amend, and repeal ~~rules~~
2054 ~~and~~ regulations and issue orders consistent with and in furtherance of the objectives of this
2055 chapter, but the ~~agency may~~ Common Interest Community Board shall not intervene in the
2056 internal activities of an association except to the extent necessary to prevent or cure violations of
2057 this chapter. The ~~agency~~ Common Interest Community Board may prescribe forms and
2058 procedures for submitting information to the ~~agency~~ Common Interest Community Board.

2059 B. If it appears that any person has engaged, is engaging, or is about to engage in any act
2060 or practice in violation of this chapter or any of the ~~agency's~~ Common Interest Community
2061 Board's regulations or orders, the ~~agency~~ Common Interest Community Board without prior
2062 administrative proceedings may bring suit in the appropriate court to enjoin that act or practice
2063 or for other appropriate relief. The ~~agency~~ Common Interest Community Board is not required
2064 to post a bond or prove that no adequate remedy at law exists.

2065 C. The ~~agency~~ Common Interest Community Board may intervene in any action or suit
2066 involving the powers or responsibilities of a declarant in connection with any cooperative for
2067 which an application for registration is on file.

2068 D. The ~~agency~~ Common Interest Community Board may accept grants-in-aid from any
2069 governmental source and may contract with agencies charged with similar functions in this or
2070 other jurisdictions in furtherance of the objectives of this chapter.

2071 E. The ~~agency~~ Common Interest Community Board may cooperate with agencies
2072 performing similar functions in this and other jurisdictions to develop uniform filing procedures

2073 and forms, uniform disclosure standards, and uniform administrative practices, and may develop
2074 information that may be useful in the discharge of the agency's duties.

2075 F. In issuing any cease and desist order or order rejecting or revoking registration of a
2076 cooperative, the ~~agency~~ Common Interest Community Board shall state the basis for the adverse
2077 determination and the underlying facts.

2078 G. The ~~agency~~ Common Interest Community Board, in its sound discretion, may require
2079 bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its
2080 regulations to guarantee completion of all improvements labeled "MUST BE BUILT" pursuant
2081 to § ~~55-494~~ 55.1-xxx.

2082 **Drafting note: The term "agency" is replaced with "Common Interest Community**
2083 **Board throughout the Chapter. In subsection A, the word "rules" is stricken prior to the**
2084 **word "regulations" because an administrative agency promulgates regulations, not rules.**
2085 **In subsection A, the word "may" is replaced with "shall" because the phrase "may not"**
2086 **as used in this section expresses an absolute prohibition, which, to be consistent**
2087 **throughout the Code, is more properly expressed by the phrase "shall not." Technical**
2088 **changes are made.**

2089 § ~~55-497~~ 55.1-xxx. Registration required.

2090 A declarant ~~may~~ shall not offer or dispose of a cooperative interest intended for
2091 residential use unless the cooperative and the cooperative interest are registered with the ~~agency~~
2092 Common Interest Community Board. A cooperative consisting of no more than three units
2093 ~~which that~~ is not subject to development rights is exempt from the requirements of this section.

2094 **Drafting note: The word "may" is replaced with "shall" because the phrase "may**
2095 **not" as used in this section expresses an absolute prohibition, which, to be consistent**
2096 **throughout the Code, is more properly expressed by the phrase "shall not." The term**
2097 **"agency" is replaced with "Common Interest Community Board throughout the Chapter.**
2098 **A technical change is made.**

2099 § ~~55-498~~ 55.1-xxx. Application for registration; approval of uncompleted unit.

2100 A. An application for registration must contain the information and be accompanied by
2101 any reasonable fees required by the ~~agency's~~ Common Interest Community Board's regulations.

2102 A declarant promptly shall file amendments to report any factual or expected material change in
2103 any document or information contained in his application.

2104 B. If a declarant files with the ~~agency~~ Common Interest Community Board a declaration
2105 or proposed declaration, or an amendment or proposed amendment to a declaration, creating
2106 units for which he proposes to convey cooperative interests before the units are substantially
2107 completed in the manner required by § ~~55-495.55.1-xxx~~, the declarant shall also file with the
2108 agency Common Interest Community Board:

2109 1. A verified statement showing all costs involved in completing the buildings
2110 containing those units;

2111 2. A verified estimate of the time of completion of construction of the buildings
2112 containing those units;

2113 3. Satisfactory evidence of sufficient funds to cover all costs to complete the buildings
2114 containing those units;

2115 4. A copy of the executed construction contract and any other contracts for the
2116 completion of the buildings containing those units;

2117 5. A 100 percent payment and performance bond covering the entire cost of construction
2118 of the buildings containing those units;

2119 6. Plans for the units;

2120 7. If purchasers' funds are to be utilized for the construction of the cooperative, an
2121 executed copy of the escrow agreement with an escrow company or financial institution
2122 authorized to do business within the state ~~which that~~ provides ~~that~~:

2123 a. ~~Disbursements~~ That disbursements of purchasers' funds may be made from time to
2124 time to pay for construction of the cooperative, architectural, and engineering costs, finance and
2125 legal fees, and other costs for the completion of the cooperative in proportion to the value of the
2126 work completed by the contractor as certified by an independent, registered architect or

2127 engineer, on bills submitted and approved by the lender of construction funds or the escrow
2128 agent;

2129 b. ~~Disbursement~~ That disbursement of the balance of purchasers' funds remaining after
2130 completion of the cooperative shall be made only when the escrow agent or lender receives
2131 satisfactory evidence that the period for filing mechanic's and materialman's liens has expired,
2132 or that the right to claim those liens has been waived, or that adequate provision has been made
2133 for satisfaction of any claimed mechanic's or materialman's lien; and

2134 c. Any other restriction relative to the retention and disbursement of purchasers' funds
2135 required by the ~~agency~~ Common Interest Community Board; and

2136 8. Any other materials or information the agency may require by its regulations.

2137 The ~~agency may~~ Common Interest Community Board shall not register the units
2138 described in the declaration or the amendment unless the ~~agency~~ Common Interest Community
2139 Board determines, on the basis of the material submitted by the declarant and any other
2140 information available to the ~~agency~~ Common Interest Community Board, that there is a
2141 reasonable basis to expect that the cooperative interests to be conveyed will be completed by the
2142 declarant following conveyance.

2143 **Drafting note: The term "agency" is replaced with "Common Interest Community**
2144 **Board throughout the Chapter. In the last paragraph, the word "may" is replaced with**
2145 **"shall" because the phrase "may not" as used in this section expresses an absolute**
2146 **prohibition, which, to be consistent throughout the Code, is more properly expressed by**
2147 **the phrase "shall not."**

2148 § ~~55-499~~ 55.1-xxx. Receipt of application; order or registration.

2149 A. The ~~agency~~ Common Interest Community Board shall acknowledge receipt of an
2150 application for registration within five business days after receiving it. Within ~~sixty~~ 60 days
2151 after receiving the application, the ~~agency~~ Common Interest Community Board shall determine
2152 whether:

2153 1. The application and the proposed public offering statement satisfy the requirements of
2154 this chapter and the ~~agency's~~ [Common Interest Community Board's](#) regulations;

2155 2. The declaration and bylaws comply with this chapter; and

2156 3. It is likely that the improvements the declarant has undertaken to make can be
2157 completed as represented.

2158 B. If the ~~agency~~ [Common Interest Community Board](#) makes a favorable determination,
2159 it shall issue promptly an order registering the cooperative. Otherwise, unless the declarant has
2160 consented in writing to a delay, the ~~agency~~ [Common Interest Community Board](#) shall issue
2161 promptly an order rejecting registration.

2162 **Drafting note: The term "agency" is replaced with "Common Interest Community
2163 Board throughout the Chapter. A technical change is made.**

2164 § ~~55-500~~ [55.1-xxx](#). Cease and desist order.

2165 If the ~~agency~~ [Common Interest Community Board](#) determines, after notice and hearing,
2166 that any person has disseminated or caused to be disseminated orally or in writing any false or
2167 misleading promotional materials in connection with a cooperative; or that any person has
2168 otherwise violated any provision of this chapter or the ~~agency's rules~~, [Common Interest
2169 Community Board's](#) regulations or orders, the ~~agency~~ [Common Interest Community Board](#) may
2170 issue an order to cease and desist from that conduct to comply with the provisions of this
2171 chapter and the ~~agency's rules~~, [Common Interest Community Board's](#) regulations and orders; or
2172 to take affirmative action to correct conditions resulting from that conduct or failure to comply.

2173 **Drafting note: The term "agency" is replaced with "Common Interest Community
2174 Board throughout the Chapter. The word "rules" is stricken prior to the word
2175 "regulations" because an administrative agency promulgates regulations, not rules.
2176 Technical changes.**

2177 § ~~55-501~~ [55.1-xxx](#). Revocation of registration.

2178 A. The ~~agency Common Interest Community Board~~, after providing notice stating the
2179 deficiency complained of and holding a hearing, may issue an order revoking the registration of
2180 a cooperative upon determination that a declarant or any officer or principal of a declarant has:

2181 1. Failed to comply with a cease and desist order issued by the ~~agency Common Interest~~
2182 Community Board affecting that cooperative;

2183 2. Concealed, diverted, or disposed of any funds or assets of any person in a manner
2184 impairing rights of purchasers of cooperative interests in that cooperative;

2185 3. Failed to perform any stipulation or agreement made to induce the ~~agency Common~~
2186 Interest Community Board to issue an order relating to that cooperative;

2187 4. Intentionally misrepresented or failed to disclose a material fact in the application for
2188 registration; or

2189 5. Failed to meet any of the conditions described in §§ ~~55-498~~ 55.1-xxx and ~~55-499~~
2190 55.1-xxx necessary to qualify for registration.

2191 B. Without the consent of the ~~agency Common Interest Community Board~~, a declarant
2192 shall not convey, cause to be conveyed, or contract for the conveyance of any cooperative
2193 interest while an order revoking the registration of the cooperative is in effect.

2194 C. In appropriate cases, the ~~agency, in its discretion,~~ Common Interest Community
2195 Board may issue a cease and desist order in lieu of an order of revocation.

2196 **Drafting note: The term "agency" is replaced with "Common Interest Community**
2197 **Board throughout the Chapter. In subsection C, the phrase "in its discretion" is deleted as**
2198 **unnecessary. Technical changes are made.**

2199 § ~~55-503~~ 55.1-xxx. Investigative powers of ~~agency the Common Interest Community~~
2200 Board.

2201 A. The ~~agency Common Interest Community Board~~ may initiate public or private
2202 investigations within or outside ~~this~~ the Commonwealth to determine whether any
2203 representation in any document or information filed with the ~~agency Common Interest~~

2204 [Community Board](#) is false or misleading or whether any person has engaged, is engaging, or is
2205 about to engage in any unlawful act or practice.

2206 B. In the course of any investigation or hearing, the ~~agency~~ [Common Interest](#)
2207 [Community Board](#) may subpoena witnesses and documents, administer oaths and affirmations,
2208 and adduce evidence. If a person fails to comply with a subpoena or to answer questions
2209 propounded during the investigation or hearing, the ~~agency~~ [Common Interest Community Board](#)
2210 may apply to the appropriate court for a contempt order or for injunctive or other appropriate
2211 relief to secure compliance.

2212 **Drafting note: The term "agency" is replaced with "Common Interest Community**
2213 **Board throughout the chapter. Technical changes are made.**

2214 § ~~55-504~~ [55.1-xxx](#). Annual report and amendments.

2215 A. A declarant, within ~~thirty~~ [30](#) days after the anniversary date of the order of
2216 registration, shall file annually a report to bring ~~up to date~~ [up to date](#) the material contained in
2217 the application for registration and the public offering statement. This provision does not relieve
2218 the declarant of the obligation to file amendments pursuant to subsection B.

2219 B. A declarant shall file promptly amendments to the public offering statement with the
2220 [agency \[Common Interest Community Board\]\(#\).](#)

2221 C. If an annual report reveals that a declarant owns or controls cooperative interests
2222 representing less than ~~twenty-five~~ [25](#) percent of the voting power in the association and that a
2223 declarant has no power to increase the number of units in the cooperative or to cause a merger
2224 or confederation of the cooperative with other cooperatives, the ~~agency~~ [Common Interest](#)
2225 [Community Board](#) shall issue an order relieving the declarant of any further obligation to file
2226 annual reports. ~~Thereafter~~ [After such order is issued](#), so long as the declarant is offering any
2227 cooperative interests for sale, the ~~agency~~ [Common Interest Community Board](#) has jurisdiction
2228 over the declarant's activities, but has no other authority to regulate the cooperative.

2229 **Drafting note: The term "agency" is replaced with "Common Interest Community**
2230 **Board throughout the chapter. Technical changes are made.**

2231 § ~~55-504.1~~ 55.1-xxx. Annual report by associations.

2232 A. The association shall file an annual report in a form and at such time as prescribed by
2233 regulations of the agency Common Interest Community Board. The filing of the annual report
2234 required by this section shall commence upon the termination of any declarant control period
2235 reserved pursuant to § ~~55-460~~ 55.1-xxx. The annual report shall be accompanied by a fixed fee
2236 in an amount established by the agency Common Interest Community Board.

2237 B. The agency may accept copies of forms submitted to other state agencies to satisfy
2238 the requirements of this section if such forms contain substantially the same information
2239 required by the agency Common Interest Community Board.

2240 C. The association shall also remit to the agency Common Interest Community Board an
2241 annual payment as follows:

2242 1. The lesser of:

2243 a. \$1,000 or such other amount as established by agency Common Interest Community
2244 Board regulation; or

2245 b. Five hundredths of one percent (0.05%) of the association's gross assessment income
2246 during the preceding year.

2247 2. For the purposes of subdivision 1 b, no minimum payment shall be less than ~~\$10.00~~
2248 \$10.

2249 D. The annual payment shall be remitted to the State Treasurer and shall be ~~placed to the~~
2250 ~~credit of~~ credited to the Common Interest Community Management Information Fund
2251 established pursuant to § ~~55-529~~ 55.1-xxx.

2252 **Drafting note: The term "agency" is replaced with "Common Interest Community**
2253 **Board throughout the chapter. A technical change is made.**

2254 § ~~55-505~~ 55.1-xxx. Agency Common Interest Community Board regulation of public
2255 offering statement.

2256 A. The agency Common Interest Community Board at any time may require a declarant
2257 to alter or supplement the form or substance of a public offering statement to assure adequate
2258 and accurate disclosure to prospective purchasers.

2259 B. The public offering statement ~~may shall~~ not be used for any promotional purpose
2260 before registration and shall be used afterwards only if it is used in its entirety. No person ~~may~~
2261 shall advertise or represent that the agency Common Interest Community Board has approved or
2262 recommended the cooperative, the disclosure statement, or any of the documents contained in
2263 the application for registration.

2264 C. In the case of a cooperative situated wholly outside of ~~this the~~ Commonwealth, no
2265 application for registration or proposed public offering statement, filed with the ~~agency, which~~
2266 Common Interest Community Board that has been approved by an agency in the state where the
2267 cooperative is located and substantially complies with the requirements of this chapter, ~~may~~
2268 shall be rejected by the ~~agency Common Interest Community Board~~ on the grounds of
2269 noncompliance with any different or additional requirements imposed by this chapter or by the
2270 agency's Common Interest Community Board's regulations. However, the ~~agency Common~~
2271 Interest Community Board may require additional documents or information in particular cases
2272 to assure adequate and accurate disclosure to prospective purchasers.

2273 **Drafting note: The term "agency" is replaced with "Common Interest Community**
2274 **Board throughout the Chapter. In subsections B and C, the word "may" is replaced with**
2275 **"shall" because the phrase "may not" as used in these subsections expresses an absolute**
2276 **prohibition, which, to be consistent throughout the Code, is more properly expressed by**
2277 **the phrase "shall not." Technical changes are made.**

2278 § ~~55-506~~ 55.1-xxx. Penalties.

2279 Any person who willfully violates ~~§§ 55-478 § 55.1-xxx, 55-481 55.1-xxx, 55-482 55.1-~~
2280 ~~xxx, 55-485 55.1-xxx, 55-487 55.1-xxx, 55-498 55.1-xxx, 55-504, or 55.1-xxx~~ or any ~~rule~~
2281 regulation adopted under, or order issued pursuant to, § ~~55-502~~ 55.1-xxx, or any person who
2282 willfully in an application for registration makes any untrue statement of a material fact or omits

2283 to state a material fact, ~~shall be~~ is guilty of a misdemeanor and may be (i) fined not less than
2284 \$1,000 or double the amount of gain from the transaction, whichever is ~~the~~ larger, but not more
2285 than \$50,000; or ~~he may be~~ (ii) imprisoned for not more than ~~6~~ six months; or both, for each
2286 offense.

2287 **Drafting note: The word "rule" is replaced with the word "regulation" because an**
2288 **administrative agency promulgates regulations, not rules. Technical changes are made.**

2289 #