

SUBTITLE IV.

COMMON INTEREST COMMUNITIES.

Drafting note: Proposed Subtitle IV is created to logically reorganize all provisions relating to common interest communities. Proposed Subtitle IV contains six chapters: Property Owners' Association Act, Virginia Condominium Act, Horizontal Property Act, Virginia Real Estate Cooperative Act, Virginia Timeshare Act, and Subdivided Land Sales Act.

~~CHAPTER 26~~ XX.

PROPERTY OWNERS' ASSOCIATION ACT.

Drafting note: Existing Chapter 26, the Property Owners' Association Act, is retained as proposed Chapter XX. This proposed chapter is logically divided into three articles.

Article 1.

General Provisions.

Drafting note: Existing Article 1 is retained and contains general provisions for the Property Owners' Association Act.

~~§ 55-509~~ 55.1-xxx. Definitions.

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

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

"Association" means the property owners' association.

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

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

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

"Common interest community" means the same as that term is defined in § ~~55-528~~ 55.1-xxx.

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

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part ~~thereof~~ of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, ~~or~~ on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance ~~and/or~~ or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" ~~shall~~ does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

"Development" means real property located within ~~this~~ the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through ~~A~~ 9 of § ~~55-509.5~~ 55.10-xxx. The update shall include a copy of the original disclosure packet.

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

"Financial update" means an update of the financial information referenced in subdivisions A 2 through ~~A 7~~ of § ~~55-509.5~~ 55.1-xxx.

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

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

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

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

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § ~~55-525.16~~ 55.1-xxx.

Drafting note: The defined term "Act" is stricken because it is not used in the chapter. In the definition of "declaration," the term "and/or," a grammatical shortcut that is inherently ambiguous, is stricken and replaced with the word "or" to reflect its meaning "or" in the sense of either or both/all. A definition of "electronic means" is added to define that term as it appears in § 55.1-xxx [§ 55-515.3]; the definition is identical to the definition of the term as it appears in proposed § 55.1-xxx of the Virginia Condominium Act [§ 55-79.41] (§ 55.1-xxx et seq.). The definition of "meeting" is deleted because it is inconsistent with the provisions of §§ 55.1-xxx and 55.1-xxx [§§ 55-510 and 55-510.1], in which rules are outlined for both association meetings and board of directors meetings; the definition of "meeting" applied only to board of directors meetings and created confusion. Technical changes are made.

§ ~~55-508~~ 55.1-xxx. Applicability.

A. This chapter ~~shall apply~~ applies to developments subject to a declaration, ~~as defined herein,~~ initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the ~~former~~ Subdivided Land Sales Act (§ ~~55-336~~ 55.1-xxx et seq.). For the purposes of this chapter, as used in the ~~former~~ Subdivided Land Sales Act, the terms:

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

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

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

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

This chapter ~~shall be deemed to supersede~~ supersedes the ~~former~~ Subdivided Land Sales Act (§ ~~55-336~~ 55.1-xxx et seq.), and no development shall be ~~established under~~ subject to the ~~latter~~ Subdivided Land Sales Act on or after July 1, 1998. ~~This chapter shall not be construed to~~

~~affect the validity of any provision of any declaration recorded prior to July 1, 1998; however,~~
~~any~~ Any development established prior to ~~the enactment of the former Subdivided Land Sales~~
~~Act July 1, 1978,~~ may specifically provide for the applicability of the provisions of this chapter.

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

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of
any association governing, or (iii) relationship of a member to any association governing
condominiums created pursuant to the Condominium Act (§ ~~55-79.39~~ 55.1-xxx et seq.),
cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ ~~55-424~~ 55.1-xxx et
seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ ~~55-360~~ 55.1-
xxx et seq.), or membership campgrounds created pursuant to the Virginia Membership
Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit,
taxable corporation with nonmandatory membership ~~which~~ that, as its primary function, makes
available golf, ski, and other recreational facilities both to its members and the general public.

**Drafting note: In subsection A, the explanation of the term "lot" is deleted as
unnecessary. In subsection A, the word "former" is stricken as unnecessary where it
appears before "Subdivided Land Sales Act": there is only one Subdivided Land Sales
Act. In the paragraph in subsection A that explains that the Property Owners' Association
Act supersedes the Subdivided Land Sales Act, the date of July 1, 1978, is inserted for
clarity, as the Subdivided Land Sales Act was enacted on July 1, 1978. These changes**

correct the characterization of the Subdivided Land Sales Act and clarify the applicability of that Act. Technical changes are made.

~~§ 55-509.1~~ § 55.1-xxx. Developer to pay real estate taxes attributable to the common area ~~upon transfer to association.~~

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

Drafting note: Catchline is shortened.

~~§ 55-509.1:1~~ § 55.1-xxx. Limitation on certain contracts and leases by declarant.

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

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions ~~thereof of such contract or lease.~~

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its

board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

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

Drafting note: Technical change.

§ ~~55-509.2~~ 55.1-xxx. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors other than the declarant are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including ~~without limitation,~~ minute books and rules and regulations and all amendments ~~thereto which to such rules and regulations that~~ may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the ~~home lot~~ owners, not to exceed 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies ~~which that~~ are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the association property; and (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors.

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

Drafting note: The phrase "without limitation" is stricken after the word "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." The word "home" is stricken and replaced with "lot" to use the defined term "lot owners." Technical changes are made.

§ ~~55-509.3~~ 55.1-xxx. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association ~~may~~ shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § ~~55-509.6~~ 55.1-xxx or ~~55-509.7~~ 55.1-xxx that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § ~~55-509.6~~ 55.1-xxx or ~~55-509.7~~ 55.1-xxx. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator pursuant to § 54.1-2349 or 54.1-2352, as applicable.

Drafting note: "May" is stricken and replaced with "shall" because it is used in this section to express an absolute prohibition, which, to be consistent throughout the Code, is more properly expressed by the phrase "No association shall."

§ ~~55-509.3-1~~ 55.1-xxx. Rental of lots.

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

214 1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an
215 assessment or impose a charge except as provided in § ~~55-509.3~~ 55.1-xxx;

216 2. Charge a rental fee, application fee, or other processing fee of any kind in excess of
217 \$50 during the term of any lease;

218 3. Charge an annual or monthly rental fee or any other fee not expressly authorized in §
219 ~~55-509.3~~ 55.1-xxx;

220 4. Require the lot owner to use a lease or an addendum to the lease prepared by the
221 association;

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

223 6. Have the authority to evict a tenant of any lot owner or to require any lot owner to
224 execute a power of attorney authorizing the association to ~~so~~-evict such a tenant. However, if the
225 lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's
226 authorized representative with respect to any lease, the association shall recognize such
227 representation without a formal power of attorney, provided that the association is given a
228 written authorization signed by the lot owner designating such representative. Notwithstanding
229 the foregoing, the requirements of § ~~55-515~~ 55.1-xxx and the declaration shall be satisfied
230 before any such representative may exercise a vote on behalf of a lot owner as a proxy.

231 B. The association may require the lot owner to provide the association with (i) the
232 names and contact information of and vehicle information for the tenants and authorized
233 occupants under such lease and (ii) the name and contact information of any authorized agent of
234 the lot owner, ~~and vehicle information for such tenants or authorized occupants~~. The association
235 may require the lot owner to provide the association with the tenant's ~~acknowledgement~~
236 acknowledgment of and consent to any rules and regulations of the association.

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

238 **Drafting note: The provisions of subsection B are reorganized to clarify what**
239 **information may be required of a tenant, authorized occupant, and authorized agent.**
240 **Technical changes are made.**

§ ~~55-509.3-2~~ 55.1-xxx. Statement of lot owner rights.

Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § ~~55-510~~ 55.1-xxx, including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, ~~except to the extent that~~ unless the declaration provides otherwise;

3. The right to have notice of any meeting of the board of directors, to make a record of any such ~~meetings~~ meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection F of § ~~55-510~~ 55.1-xxx and § ~~55-510.1~~ 55.1-xxx;

4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at ~~the~~ such proceeding, as provided in § ~~55-513~~ 55.1-xxx, and the right of due process in the conduct of that hearing; and

5. The right to serve on the board of directors if duly elected and a member in good standing of the association, ~~except to the extent~~ unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § ~~55-515~~ 55.1-xxx.

Drafting note: In subdivision 3, the word "meetings" is stricken and replaced with the grammatically consistent singular "meeting" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

Article 2.

Disclosure Requirements; Authorized Fees.

Drafting note: Existing Article 2 is retained and contains provisions pertaining to disclosure and fees for the Property Owners' Association Act.

§ ~~55-509.4~~ 55.1-xxx. Contract disclosure statement; right of cancellation.

A. For purposes of this article, unless the context requires a different meaning:

"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Receives, received, or receiving" the disclosure packet means that the purchaser or purchaser's authorized agent has received the disclosure packet by one of the methods specified in this section.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

B. Subject to the provisions of subsection A of § ~~55-509.10~~ 55.1-xxx, an owner selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the ~~Virginia~~ Property Owners' Association Act (§ ~~55-508~~ 55.1-xxx et seq.); (ii) the Property Owners' Association Act (§ 55.1-xxx et seq.) requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of § ~~55-509.6~~ 55.1-xxx or subsection C of § ~~55-509.7~~ 55.1-xxx, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (a) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or ~~with~~ the Common Interest Community Board pursuant to § ~~55-546.1~~ 55.1-xxx, (b) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection A of § ~~55-509.5~~ 55.1-xxx, or (c) written notice has been provided by the association that a packet is not available.

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

~~C. D.~~ The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection G of § ~~55-509.6~~ 55.1-xxx or subsection C of § ~~55-509.7~~ 55.1-xxx, as appropriate. The purchaser may cancel the contract: (i) within three days after the date of the contract, ~~if~~ if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser also may ~~also~~ cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser.

Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

- 322 1. Hand delivery;
- 323 2. United States mail, postage prepaid, provided that the sender retains sufficient proof
- 324 of mailing, ~~which may be either a United States postal certificate of mailing or in the form of~~ a
- 325 certificate of service prepared by the sender confirming such mailing;
- 326 3. Electronic means, provided that the sender retains sufficient proof of the electronic
- 327 delivery, which may be in the form of an electronic receipt of delivery, a confirmation that the
- 328 notice was sent by facsimile, or a certificate of service prepared by the sender confirming the
- 329 electronic delivery; or
- 330 4. Overnight delivery using a commercial service or the United States Postal Service.

331 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the

332 notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any

333 deposit to be returned promptly to the purchaser.

334 ~~D. E.~~ Whenever any contract is canceled based on a failure to comply with subsection ~~A~~

335 ~~B~~ or ~~C~~ D or pursuant to subsection ~~B~~ C, any deposit or escrowed funds shall be returned within

336 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.

337 ~~E. F.~~ Any rights of the purchaser to cancel the contract provided by this chapter are

338 waived ~~conclusively~~ if not exercised prior to settlement.

339 ~~F. G.~~ Except as expressly provided in this chapter, the provisions of this section and §

340 ~~55-509.5 55.1-xxx~~ may not be varied by agreement, and the rights conferred by this section and

341 § ~~55-509.5 55.1-xxx~~ may not be waived.

342 ~~G. For purposes of this chapter:~~

343 ~~"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's~~

344 ~~authorized agent by one of the methods specified in this section.~~

345 ~~"Purchaser's authorized agent" means any person designated by such purchaser in a~~

346 ~~ratified real estate contract for purchase and sale of residential real property or other writing~~

347 ~~designating such agent.~~

~~"Receives, received, or receiving" the disclosure packet means that the purchaser or purchaser's authorized agent has received the disclosure packet by one of the methods specified in this section.~~

~~"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.~~

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

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

~~J. Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall:~~

~~1. Require the use of any for sale sign that is (i) an association sign or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. An association may, however, prohibit the placement of signs in the common area and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed; or~~

~~2. Require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized~~

~~representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.~~

Drafting note: The definitions contained in existing subsection G are relocated to subsection A. In proposed subsection B, "Property Owners' Association" is inserted prior to the word "Act" because the disclosure should be clear as to the basis for the requirement. In proposed subdivision D 2, the reference to a U.S. postal certificate of mailing is stricken because that type of certificate is no longer used. In proposed subsection F, the word "conclusively" is stricken as unnecessary. The language in existing subsection J is relocated to proposed §§ 55.1-xxx and 55.1-xxx [Use of for sale signs in connection with sale; Designation of authorized representative] to form two separate sections pertaining to limitations placed on the authority of associations relating to resale of units. Technical changes are made.

~~§ 55-509.5~~ 55.1-xxx. Contents of association disclosure packet; delivery of packet.

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

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

401 2. A statement of any expenditure of funds approved by the association or the board of
402 | directors that ~~shall require~~ requires an assessment in addition to the regular assessment during
403 | the current year or the immediately succeeding fiscal year;

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

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

410 5. The current reserve study report or summary ~~thereof of such report~~, a statement of the
411 | status and amount of any reserve or replacement fund, and any portion of the fund allocated by
412 | the board of directors for a specified project;

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

417 7. A statement of the nature and status of any pending suit or unpaid judgment (i) to
418 | which the association is a party and (ii) that ~~either~~ could or would have a material impact on the
419 | association or its members or that relates to the lot being purchased;

420 8. A statement setting forth ~~what the~~ insurance coverage that is provided for all lot
421 | owners by the association, including the fidelity ~~bond coverage~~ maintained by the association,
422 | and ~~what any~~ additional insurance ~~would normally be secured by that is required or~~
423 | recommended for each ~~individual~~ lot owner;

424 9. A statement that any improvement or alteration made to the lot, or uses made of the
425 | lot or common area assigned ~~thereto are to such lot, is~~ or ~~are is~~ not in violation of the
426 | declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation,
427 | if any, of the association;

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

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

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

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

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

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

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

17. Certification that the association has filed with the Common Interest Community Board the annual report required by ~~§ 55-516.1, which~~ § 55.1-xxx. Such certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing; and

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

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

C. The disclosure packet shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the disclosure packet

shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. The disclosure packet required by this section, shall not, in and of itself, be deemed a security ~~within the meaning of as defined in~~ § 13.1-501.

D. The seller or the seller's authorized agent may request that the disclosure packet be provided in hard copy or in electronic form. An association or common interest community manager may provide the disclosure packet electronically; however, the seller or the seller's authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the disclosure packet in person at the principal place of business of the association. If the seller or the seller's authorized agent requests that the disclosure packet be provided in electronic format, neither the association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The disclosure packet shall not be delivered in hard copy if the requester has requested delivery of such disclosure packet electronically. If the disclosure packet is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § ~~55-509.6~~ 55.1-xxx. If the seller or the seller's authorized agent asks that the disclosure packet be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the property owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § ~~55-509.6~~ 55.1-xxx. Regardless of whether the disclosure packet is delivered in paper form or electronically, the preparer of the disclosure packet shall provide such disclosure

packet directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

Drafting note: In subdivision A 8, language is updated and clarified. In subdivision A 11, the phrase "but not limited to" is stricken after the word "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made.

~~§ 55-509.6~~ § 55.1-xxx. Fees for disclosure packet; professionally managed associations.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by ~~§ 55-509.5~~ § 55.1-xxx, and for such other services as set out in this section. The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

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

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

2. ~~The~~ For preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

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

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

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

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

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and ~~§ 55-516~~ § 55.1-xxx, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever occurs first.

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

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. No additional fee shall be charged for access to the association's or common interest community manager's website. The association or its common interest community manager shall publish and make available in

paper or electronic format, or both, a schedule of the applicable fees so the seller or the seller's authorized agent will know such fees at the time of requesting the packet.

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

E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and ~~§ 55-516~~ 55.1-xxx. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

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

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

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

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

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

manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When an association disclosure packet has been delivered as required by § ~~55-509.5~~ [55.1-xxx](#), the association shall, as to the purchaser, be bound by the statements set forth ~~therein~~ [in the disclosure packet](#) as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § ~~55-509.5~~ [55.1-xxx](#), failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the association disclosure packet within 14 days against any (i) property owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

Drafting note: Technical changes.

§ ~~55-509.7~~ 55.1-xxx. Fees for disclosure packets; associations not professionally managed.

A. An association that is not professionally managed may charge a fee for the preparation and issuance of the association disclosure packet required by § ~~55-509.5~~ 55.1-xxx. Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify whether the association disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent. The association shall advise the ~~requestor~~ requester if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

B. No fees other than those specified in this section shall be charged by the association for compliance with its duties and responsibilities under this section. Any fees charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § ~~55-516~~ 55.1-xxx. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

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

information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request ~~therefor~~ for such disclosure packet update.

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

E. A reasonable fee for the disclosure packet update or a financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the ~~requestor~~ requester may request that the association perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed \$50. Any fees charged for the specified update shall be collected at the time of delivery of the update. The association shall not require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The ~~requestor~~ requester may request that the specified update be provided in hard copy or in electronic form.

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

G. When a disclosure packet has been delivered as required by § ~~55-509.5~~ 55.1-xxx, the association shall, as to the purchaser, be bound by the statements set forth ~~therein~~ in the

[disclosure packet](#) as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

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

Drafting note: Technical changes.

~~§ 55-509.8~~ [§ 55.1-xxx](#). Properties subject to more than one declaration.

If the lot is subject to more than one declaration, the association or its common interest community manager may charge the fees authorized by ~~§ 55-509.6~~ [§ 55.1-xxx](#) or ~~§ 55-509.7~~ [§ 55.1-xxx](#) for each of the applicable associations, provided, however, that no association shall charge inspection fees unless the association has architectural control over the lot.

Drafting note: Technical change.

~~§ 55-509.9~~ [§ 55.1-xxx](#). Requests by settlement agents.

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

instructions, ~~however.~~ However, a fee may be charged for a financial update pursuant to this chapter.

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

Drafting note: Technical change.

§ ~~55-509.10~~ 55.1-xxx. Exceptions to disclosure requirements.

A. The contract disclosures required by § ~~55-509.4~~ 55.1-xxx and the association disclosure packet required by § ~~55-509.5~~ 55.1-xxx shall not be provided in the case of:

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

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

722 C. In the case of an initial disposition of a lot by the declarant, the association disclosure
723 packet required by § ~~55-509.5~~ 55.1-xxx need not include the information referenced in
724 subdivisions A 2, ~~A 3, A 5~~ nor, or A 9 of § ~~55-509.5~~ 55.1-xxx, and it shall include the
725 information referenced in subdivision A 17 of § ~~55-509.5~~ 55.1-xxx only if the association has
726 filed an annual report prior to the date of such disclosure packet.

727 **Drafting note: Technical changes.**

728 Article 3.

729 Operation and Management of Association.

730 **Drafting note: Existing Article 3 is retained and contains provisions pertaining to**
731 **the operation and management of property owners' associations.**

732 § ~~55-510~~ 55.1-xxx. Access to association records; association meetings; notice.

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

736 B. Subject to the provisions of subsection C and so long as the request is for a proper
737 purpose related to his membership in the association, all books and records kept by or on behalf
738 of the association, shall be available for examination and copying by a member in good standing
739 or his authorized agent, including ~~but not limited to:~~

740 1. The association's membership list and addresses, which shall not be used for purposes
741 of pecuniary gain or commercial solicitation; and

742 2. The actual salary of the six highest compensated employees of the association earning
743 over \$75,000 and aggregate salary information of all other employees of the association;
744 however, individual salary information shall not be available for examination and copying
745 during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

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

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. ~~Probable~~ For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a party person or the legal counsel of a party person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to ~~§ 55-513.55.1-xxx~~;
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of ~~§ 55-510.1 55.1-xxx~~;
8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

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

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

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

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

794 Notice shall be sent by United States mail to all members at the address of their
795 respective lots unless the member has provided to such officer or his agent an address other than
796 the address of the member's lot; ~~or notice~~. Notice may instead be hand delivered by the officer
797 or his agent, provided that the officer or his agent certifies in writing that notice was delivered to
798 the member. Except as provided in subdivision C 7, draft minutes of the board of directors shall

be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

Drafting note: In subsection B, the phrase "but not limited to" is stricken following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subdivision C 3, the word "party" is stricken and replaced with the word "person" because there are no "parties" if there is no pending litigation. In subdivision C 9, the word "unit" is stricken and replaced with "lot" to use the defined term "lot owner." Technical changes are made.

~~§ 55-540.1~~ § 55.1-xxx. Meetings of the board of directors.

A. All meetings of the board of directors, including any subcommittee or other committee ~~thereof of the board of directors, where the business of the association is discussed or transacted~~ shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of ~~§ 55-540~~ § 55.1-xxx.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee ~~thereof of the board of directors~~ shall be published where it is reasonably calculated to be available to a majority of the lot owners.

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

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of

826 directors or any subcommittee or other committee ~~thereof~~ of the board of directors conducting
827 the meeting.

828 Unless otherwise exempt as relating to an executive session pursuant to subsection C, at
829 least one copy of all agenda packets and materials furnished to members of an association's
830 board of directors or subcommittee or other committee ~~thereof~~ of the board of directors for a
831 meeting shall be made available for inspection by the membership of the association at the same
832 time such documents are furnished to the members of the board of directors or any
833 subcommittee or committee ~~thereof~~ of the board of directors.

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

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

844 ~~Voting-Except for the election of officers, voting~~ by secret or written ballot in an open
845 meeting shall be a violation of this chapter ~~except for the election of officers~~.

846 C. The board of directors or any subcommittee or other committee ~~thereof~~ of the board
847 of directors may (i) convene in executive session to consider personnel matters; (ii) consult with
848 legal counsel; (iii) discuss and consider contracts, pending or probable litigation, and matters
849 involving violations of the declaration or rules and regulations adopted pursuant ~~thereto~~ to such
850 declaration for which a member, ~~or~~ his family members, tenants, guests, or other invitees are
851 responsible; or (iv) discuss and consider the personal liability of members to the association,
852 upon the affirmative vote in an open meeting to assemble in executive session. The motion shall

state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee ~~thereof~~ of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

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

Drafting note: In subsection A, the phrase "where the business of the association is discussed or transacted" is added based on the definition of "meeting" in § 55.1-xxx [§ 55-509], which is proposed to be deleted. Technical changes are made.

~~§ 55-540.2~~ 55.1-xxx. Distribution of information by members.

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

Drafting note: No change.

~~§ 55-540.3~~ 55.1-xxx. Common areas; notice of pesticide application.

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

Drafting note: No change.

880 ~~§ 55-511. Repealed.~~

881 **Drafting note: Repealed by Acts 2008, cc. 851 and 871, cl. 5.**

882 ~~§ 55-513~~ 55.1-xxx. Adoption and enforcement of rules.

883 A. Except as otherwise provided in this chapter, the board of directors shall have the
884 power to establish, adopt, and enforce rules and regulations with respect to use of the common
885 areas and with respect to such other areas of responsibility assigned to the association by the
886 declaration, except where expressly reserved by the declaration to the members. Rules and
887 regulations may be adopted by resolution and shall be reasonably published or distributed
888 throughout the development. A majority of votes cast, in person or by proxy, at a meeting
889 convened in accordance with the provisions of the association's bylaws and called for that
890 purpose shall repeal or amend any rule or regulation adopted by the board of directors. Rules
891 and regulations may be enforced by any method normally available to the owner of private
892 property in Virginia, including, ~~but not limited to,~~ application for injunctive relief or actual
893 damages, during which the court may award to the prevailing party court costs and reasonable
894 attorney fees.

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

904 C. Before any action authorized in this section is taken, the member shall be given a
905 reasonable opportunity to correct the alleged violation after written notice of the alleged
906 violation to the member at the address required for notices of meetings pursuant to ~~§ 55-510~~

907 [55.1-xxx](#). If the violation remains uncorrected, the member shall be given an opportunity to be
908 heard and to be represented by counsel before the board of directors or other tribunal specified
909 in the documents.

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

916 D. The amount of any charges so assessed shall not be limited to the expense or damage
917 to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10
918 per day for any offense of a continuing nature, and shall be treated as an assessment against the
919 member's lot for the purposes of § ~~55-516~~ [55.1-xxx](#). However, the total charges for any offense
920 of a continuing nature shall not be assessed for a period exceeding 90 days.

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

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

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

Drafting note: In subsection A, the phrase "but not limited to" is stricken following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsection F, the word "it" is stricken and replaced with "the association" for clarity, and the word "unit" is stricken and replaced with "lot" to use the defined term, "lot owner". Technical changes are made.

§ ~~55-513.1~~ 55.1-xxx. Display of the flag of the United States; necessary supporting structures; affirmative defense.

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

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

C. In any action brought by the association under § ~~55-513~~ 55.1-xxx for violation of a flag restriction, the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the association.

D. In any action brought by the association under § ~~55-513~~ 55.1-xxx, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure packet required pursuant to § ~~55-509.5~~ 55.1-xxx.

Drafting note: Technical changes.

§ ~~55-513.2~~ 55.1-xxx. Home-based businesses permitted; compliance with local ordinances.

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

968 **Drafting note: Technical change.**

969 [§ 55.1-xxx. Use of for sale signs in connection with sale.](#)

970 [Except as expressly authorized in this chapter or in the declaration or as otherwise](#)
971 [provided by law, no property owners' association shall require the use of any for sale sign that is](#)
972 [\(i\) an association sign or \(ii\) a real estate sign that does not comply with the requirements of the](#)
973 [Real Estate Board. An association may, however, prohibit the placement of signs in the common](#)
974 [area and establish reasonable rules and regulations that regulate \(a\) the number of real estate](#)
975 [signs to be located on real property upon which the owner has a separate ownership interest or a](#)
976 [right of exclusive possession, so long as at least one real estate sign is permitted; \(b\) the](#)
977 [geographical location of real estate signs on real property in which the owner has a separate](#)
978 [ownership interest or a right of exclusive possession, so long as the location of the real estate](#)
979 [signs complies with the requirements of the Real Estate Board; \(c\) the manner in which real](#)
980 [estate signs are affixed to real property; and \(d\) the period of time after settlement when the real](#)
981 [estate signs on such real property shall be removed.](#)

982 **Drafting note: Proposed § 55.1-xxx contains language properly relocated to an**
983 **independent section from existing subdivision J 1 of § 55.1-xxx [§ 55-509.4] because it**
984 **deals with limitations placed upon property owners' associations regarding their ability to**
985 **mandate the placement and use of for sale signs connected with the resell by a lot owner.**

986 [§ 55.1-xxx. Designation of authorized representative.](#)

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

Drafting note: Proposed § 55.1-xxx contains language properly relocated to an independent section from existing subdivision J 2 of § 55.1-xxx [§ 55-509.4] because it deals with limitations placed upon property owners' associations regarding their ability to interfere with a lot owner's designation of an authorized representative.

~~§ 55-513.3~~ § 55.1-xxx. Assessments; late fees.

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

Drafting note: Technical changes.

~~§ 55-514~~ § 55.1-xxx. Authority to levy special assessments.

A. In addition to all other assessments ~~which~~ that are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if (i) the purpose in so doing is found by the board to be in the best interests of the association and (ii) the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's

1014 bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce
1015 the special assessment. No director or officer of the association shall be liable for failure to
1016 perform his fiduciary duty if a special assessment for the funds necessary for the director or
1017 officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the
1018 association shall indemnify such director or officer against any damage resulting from any such
1019 claimed breach of fiduciary duty ~~arising therefrom~~.

1020 B. The failure of a member to pay the special assessment allowed by subsection A shall
1021 entitle the association to the lien provided by § ~~55-514.1~~ 55.1-xxx as well as any other rights
1022 afforded a creditor under law.

1023 C. The failure of a member to pay the special assessment allowed by subsection A will
1024 provide the association with the right to deny the member access to any or all of the common
1025 areas. ~~Notwithstanding the immediately preceding sentence~~ However, the member shall not be
1026 denied direct access to the member's lot over any road within the development ~~which that~~ is a
1027 common area ~~shall not be denied the member~~.

1028 **Drafting note: Technical changes.**

1029 § ~~55-514.1~~ 55.1-xxx. Reserves for capital components.

1030 A. Except to the extent otherwise provided in the declaration and unless the declaration
1031 imposes more stringent requirements, the board of directors shall:

1032 1. Conduct at least once every five years a study to determine the necessity and amount
1033 of reserves required to repair, replace, and restore the capital components;

1034 2. Review the results of that study at least annually to determine if reserves are
1035 sufficient; and

1036 3. Make any adjustments the board of directors deems necessary to maintain reserves, as
1037 appropriate.

1038 B. To the extent that the reserve study conducted in accordance with this section
1039 indicates a need to budget for reserves, the association budget shall include ~~without limitation~~:

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

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

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

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

~~§ 55-514.2~~ § 55.1-xxx. Deposit of funds; fidelity bond.

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

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

Drafting note: Technical changes.

1067 § ~~55-545~~ 55.1-xxx. Compliance with declaration.

1068 A. Every lot owner, and all those entitled to occupy a lot₂, shall comply with all lawful
1069 provisions of this chapter and all provisions of the declaration. Any lack of such compliance
1070 shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or
1071 for any other remedy available at law or in equity, maintainable by the association₇, or by its
1072 board of directors or any managing agent on behalf of such association₇ or₂ in any proper case,
1073 by one or more aggrieved lot owners on their own behalf or as a class action. Except as provided
1074 in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs
1075 expended in the matter, and interest on the judgment as provided in § 8.01-382. This section
1076 shall not preclude an action against the association and authorizes the recovery₇ by the
1077 prevailing party in any such action₇ of reasonable attorney fees, costs expended in the matter,
1078 and interest on the judgment as provided in § 8.01-382 in such actions.

1079 B. In actions against a lot owner for nonpayment of assessments in which the lot owner
1080 has failed to pay assessments levied by the association on more than one lot or in which such lot
1081 owner has had legal actions taken against him for nonpayment of any prior assessment₂, and the
1082 prevailing party is the association or its board of directors or any managing agent on behalf of
1083 the association, the prevailing party shall be awarded reasonable attorney fees, costs expended
1084 in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is
1085 settled prior to judgment. The delinquent owner shall be personally responsible for reasonable
1086 attorney fees and costs expended in the matter by the association, whether any judicial
1087 proceedings are filed.

1088 C. A declaration may provide for arbitration of disputes or other means of alternative
1089 dispute resolution. Any such arbitration held in accordance with this subsection shall be
1090 consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.
1091 The place of any such arbitration or alternative dispute resolution shall be in the county or city
1092 in which the development is located, or as mutually agreed to by the parties.

1093 **Drafting note: Technical changes.**

1094 | § ~~55-515.1~~ 55.1-xxx. Amendment to declaration and bylaws; consent of mortgagee.

1095 | A. In the event that any provision in the declaration requires the written consent of a
1096 | mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to
1097 | have received the written consent of a mortgagee if the association sends the text of the
1098 | proposed amendment by certified mail, return receipt requested, or by regular mail with proof of
1099 | mailing to the mortgagee at the address supplied by such mortgagee in a written request to the
1100 | association to receive notice of proposed amendments to the declaration and receives no written
1101 | objection to the adoption of the amendment from the mortgagee within 60 days of the date that
1102 | the notice of amendment is sent by the association, unless the declaration expressly provides
1103 | otherwise. If the mortgagee has not supplied an address to the association, the association shall
1104 | be deemed to have received the written consent of a mortgagee if the association sends the text
1105 | of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the
1106 | address filed in the land records or with the local tax assessor's office, and receives no written
1107 | objection to the adoption of the amendment from the mortgagee within 60 days of the date that
1108 | the notice of amendment is sent by the association, unless the declaration expressly provides
1109 | otherwise.

1110 | B. Subsection A shall not apply to amendments ~~which~~ that alter the priority of the lien of
1111 | the mortgagee or ~~which~~ that materially impair or affect a lot as collateral or the right of the
1112 | mortgagee to foreclose on a lot as collateral.

1113 | C. Where the declaration is silent on the need for mortgagee consent, no mortgagee
1114 | consent shall be required if the amendment to the declaration does not specifically affect
1115 | mortgagee rights.

1116 | D. A declaration may be amended by a two-thirds vote of the lot owners. This subsection
1117 | may be applied to an association subject to a declaration recorded prior to July 1, 1999, if the
1118 | declaration is silent on how it may be amended or upon the amendment of that declaration in
1119 | accordance with its requirements.

1120 E. An action to challenge the validity of an amendment adopted by the association may
1121 not be brought more than one year after the amendment is effective.

1122 F. Agreement of the required majority of lot owners to any amendment of the declaration
1123 shall be evidenced by their execution of the amendment, or ratifications ~~thereof~~ of such
1124 amendment, and the same shall become effective when a copy of the amendment is recorded
1125 together with a certification, signed by the principal officer of the association or by such other
1126 officer or officers as the declaration may specify, that the requisite majority of the lot owners
1127 signed the amendment or ratifications ~~thereof~~ of such amendment.

1128 **Drafting note: Technical changes.**

1129 § ~~55-515.2~~ 55.1-xxx. Validity of declaration; corrective amendments.

1130 A. All provisions of a declaration shall be deemed severable, and any unlawful provision
1131 ~~thereof~~ of the declaration shall be void.

1132 B. No provision of a declaration shall be deemed void by reason of the rule against
1133 perpetuities.

1134 C. No restraint on alienation shall discriminate or be used to discriminate on any basis
1135 prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

1136 D. Subject to the provisions of subsection C, the rule of property law known as the rule
1137 restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a
1138 declaration restraining the alienation of lots other than such lots as may be restricted to
1139 residential use only.

1140 E. The rule of property law known as the doctrine of merger shall not apply to any
1141 easement included in or granted pursuant to a right reserved in a declaration.

1142 F. The declarant may unilaterally execute and record a corrective amendment or
1143 supplement to the declaration to correct a mathematical mistake, an inconsistency, or a
1144 scrivener's error; or clarify an ambiguity in the declaration with respect to an objectively
1145 verifiable fact ~~(, including without limitation~~ recalculating the liability for assessments or the
1146 number of votes in the association appertaining to a lot), within five years after the recordation

of the declaration containing or creating such mistake, inconsistency, error, or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. Regardless of the date of recordation of the declaration, the principal officer of the association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the board of directors. All corrective amendments and supplements recorded prior to July 1, 1997, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

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

~~§ 55-515.2-1~~ § 55.1-xxx. Reformation of declaration; judicial procedure.

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

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

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

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

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

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

3. Where the declarant of the development still owns a lot or other property in the development, the declarant joins in the petition of the association;

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

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

D. Any mortgagee of a lot in the development shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to ~~§ 55-545.1~~ § 55.1-xxx.

Drafting note: Language is clarified and technical changes are made.

~~§ 55-545.3~~ § 55.1-xxx. Use of technology.

A. Unless the declaration expressly provides otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using ~~the~~

~~most advanced technology available at that time if such use is a generally accepted business practice. This section shall govern the use of technology in implementing the provisions of any declaration or bylaw provision or any provision of this chapter dealing with notices, signatures, votes, consents, or approvals~~ electronic means.

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

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

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

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

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

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

Drafting note: Throughout the section, references to "electronic transmission or other equivalent technological means" have been changed simply to "electronic means" for accuracy and consistency with the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). In subsection B, the phrase "shall include without limitation" is stricken and replaced with the word "includes" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made.

~~§ 55-546~~ 55.1-xxx. Lien for assessments.

A. ~~Once perfected, the~~ The association shall have a lien, once perfected, on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of ~~said~~ such lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under ~~§ 55-58.2~~ 55.1-xxx shall be given in the same fashion as if the association's lien were a judgment.

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

1. The name of the development;
2. A description of the lot;
3. The name or names of the persons constituting the owners of that lot;

1255 4. The amount of unpaid assessments currently due or past due relative to such lot
1256 together with the date when each fell due;

1257 5. The date of issuance of the memorandum;

1258 6. The name of the association and the name and current address of the person to contact
1259 to arrange for payment or release of the lien; and

1260 7. A statement that the association is obtaining a lien in accordance with the provisions
1261 of the ~~Virginia~~ Property Owners' Association Act as set forth in Chapter ~~26~~ XX (§ ~~55-508~~ 55.1-
1262 xxx et seq.) of Title ~~55~~ 55.1.

1263 It shall be the duty of the clerk in whose office such memorandum is filed as ~~hereinafter~~
1264 provided in this section to record and index the same as provided in subsection D, in the names
1265 of the persons identified ~~therein in such memorandum~~ as well as in the name of the association.
1266 The cost of recording and releasing the memorandum shall be taxed against the person found
1267 liable in any judgment or decree enforcing such lien.

1268 C. Prior to filing a memorandum of lien, a written notice shall be sent to the property
1269 owner by certified mail, at the property owner's last known address, informing the property
1270 owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable
1271 ~~city or county~~ or city. The notice shall be sent at least 10 days before the actual filing date of the
1272 memorandum of lien.

1273 D. Notwithstanding any other provision of this section, or any other provision of law
1274 requiring documents to be recorded in the miscellaneous lien books or the deed books in the
1275 clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this
1276 section shall be recorded in the deed books in the clerk's office. Any memorandum shall be
1277 indexed in the general index to deeds, and the general index shall identify the lien as a lien for
1278 lot assessments.

1279 E. No suit to enforce any lien perfected under subsection B shall be brought or action to
1280 foreclose any lien perfected under subsection I shall be initiated after 36 months from the time
1281 when the memorandum of lien was recorded; however, the filing of a petition to enforce any

1282 such lien in any suit ~~wherein in which~~ the petition may be properly filed shall be regarded as the
1283 institution of a suit under this section. Nothing ~~herein in this subsection~~ shall extend the time
1284 within which any such lien may be perfected.

1285 F. The judgment or decree in an action brought pursuant to this section shall include,
1286 ~~without limitation,~~ reimbursement for costs and reasonable ~~attorneys'~~ attorney fees of the
1287 prevailing party. If the association prevails, it may also recover interest at the legal rate for the
1288 sums secured by the lien from the time each such sum became due and payable.

1289 G. When payment or satisfaction is made of a debt secured by the lien perfected by
1290 subsection B ~~hereof~~, the lien shall be released in accordance with the provisions of § ~~55-66.3~~
1291 55.1-xxx. Any lien ~~which that~~ is not so released shall subject the lien creditor to the penalty set
1292 forth in subdivision A 1 of § ~~55-66.3~~ 55.1-xxx. For the purposes of § ~~55-66.3~~ 55.1-xxx, the
1293 principal officer of the association, or any other officer or officers as the declaration may
1294 specify, shall be deemed the duly authorized agent of the lien creditor.

1295 H. Nothing in this section shall be construed to prohibit actions at law to recover sums
1296 for which subsection A ~~hereof~~ creates a lien, maintainable pursuant to § ~~55-515~~ 55.1-xxx.

1297 I. At any time after perfecting the lien pursuant to this section, the property owners'
1298 association may sell the lot at public sale, subject to prior liens. For purposes of this section, the
1299 association shall have the power both to sell and convey the lot and shall be deemed the lot
1300 owner's statutory agent for the purpose of transferring title to the lot. A nonjudicial foreclosure
1301 sale shall be conducted in compliance with the following:

1302 1. The association shall give notice to the lot owner prior to advertisement required by
1303 subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action
1304 required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days
1305 from the date the notice is given to the lot owner, by which the debt secured by the lien must be
1306 satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date
1307 specified in the notice may result in the sale of the lot. The notice shall further inform the lot

owner of the right to bring a court action in the circuit court of the county or city where the lot is located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

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

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

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

1334 memorandum of lien, by ~~ordinary~~ United States mail, postage prepaid, no less than 14 days
1335 prior to such sale, shall be a sufficient compliance with the requirement of notice.

1336 5. The advertisement of sale by the association shall be in a newspaper having a general
1337 circulation in the ~~city or~~ county ~~wherein or city in which~~ the property to be sold, or any portion
1338 thereof of such property, ~~lies is located~~ pursuant to the following provisions:

1339 a. The association shall advertise once a week for four successive weeks; however, if the
1340 property or some portion thereof of such property is located in a city or in a county immediately
1341 contiguous to a city, publication of the advertisement on five different days, which may be
1342 consecutive days, shall be deemed adequate. The sale shall be held on any day following the day
1343 of the last advertisement ~~which that~~ is no earlier than eight days following the first
1344 advertisement nor more than 30 days following the last advertisement.

1345 b. Such advertisement shall be placed in that section of the newspaper where legal
1346 notices appear or where the type of property being sold is generally advertised for sale. The
1347 advertisement of sale, in addition to such other matters as the association finds appropriate, shall
1348 set forth a description of the property to be sold, which description need not be as extensive as
1349 that contained in the deed of trust, but shall identify the property by street address, if any, or, if
1350 none, shall give the general location of the property with reference to streets, routes, or known
1351 landmarks. Where available, tax map identification may be used but is not required. The
1352 advertisement shall also include the date, time, place, and terms of sale and the name of the
1353 association. It shall set forth the name, address, and telephone number of the representative,
1354 agent, or attorney who may be able to respond to inquiries concerning the sale.

1355 c. In addition to the advertisement required by subdivisions a and b ~~above~~, the
1356 association may ~~give such other~~ further ~~and different advertisement~~ advertise as the association
1357 finds appropriate.

1358 6. In the event of postponement of sale, which postponement shall be at the discretion of
1359 the association, advertisement of such postponed sale shall be in the same manner as the original
1360 advertisement of sale.

1361 7. Failure to comply with the requirements for advertisement contained in this section
1362 shall, upon petition, render a sale of the property voidable by the court.

1363 8. ~~In the event of a sale, the~~ The association shall have the following powers and duties
1364 upon a sale:

1365 a. Written one-price bids may be made and shall be received by the trustee from the
1366 association or any person for entry by announcement at the sale. Any person other than the
1367 trustee may bid at the foreclosure sale, including a person who has submitted a written one-price
1368 bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be
1369 permitted to inspect written bids. Unless otherwise provided in the declaration, the association
1370 may bid to purchase the lot at a foreclosure sale. The association may own, lease, encumber,
1371 exchange, sell, or convey the lot. Whenever the written bid of the association is the highest bid
1372 submitted at the sale, such written bid shall be filed by the trustee with his account of sale
1373 required under subdivision I ~~10-of this section~~ and § 64.2-1309. The written bid submitted
1374 pursuant to this subsection may be prepared by the association, its agent, or its attorney.

1375 b. The association may require ~~of~~ any bidder at any sale to post a cash deposit of as
1376 much as 10 percent of the sale price before his bid is received, which shall be refunded to him if
1377 the property is not sold to him. The deposit of the successful bidder shall be applied to his credit
1378 at settlement, or, if such bidder fails to complete his purchase promptly, the deposit shall be
1379 applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the
1380 association in connection with that sale.

1381 c. The property owners' association shall receive and receipt for the proceeds of sale, no
1382 purchaser being required to see to the application of the proceeds, and apply the same in the
1383 following order: first, to the reasonable expenses of sale, including ~~attorneys'~~ attorney fees;
1384 second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to
1385 the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of
1386 priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds
1387 to the owner or his assigns; provided, however, that, as to the payment of such residue, the

association~~as to such residue~~ shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

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

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309, and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to §~~55-~~ 510.55.1-xxx upon the written request of the prior lot owner, the current lot owner, or any holder of a recorded lien against the lot at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

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

Drafting note: In subsection F, the phrase "without limitation" is stricken following the term "include," and in subdivision I 3, the phrase "but not limited to" is stricken following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subdivision I 4, the reference to "personal hand delivery" is updated and replaced with "hand delivery" for accuracy and consistency with the rest of the chapter. In subdivision I 4, the reference to "ordinary mail" was replaced with reference to United States mail, postage prepaid, for accuracy to reflect current practice and consistency with other notice provisions in this chapter. Technical changes are made.

1415 § ~~55-516.01~~ 55.1-xxx. Notice of sale under deed of trust.

1416 In accordance with the provisions of § 15.2-979, the association shall be given notice
1417 whenever a lot becomes subject to a sale under a deed of trust. Upon receipt of such notice, the
1418 board of directors, on behalf of the association, shall exercise whatever due diligence it deems
1419 necessary with respect to the lot subject to a sale under a deed of trust to protect the interests of
1420 the association.

1421 **Drafting note: No change.**

1422 § ~~55-516.1~~ 55.1-xxx. Annual report by association.

1423 A. The association shall file an annual report in a form and at such time as prescribed by
1424 regulations of the Common Interest Community Board. The annual report shall be accompanied
1425 by a fixed fee in an amount established by the Board.

1426 B. ~~The Common Interest Community Board may accept copies of forms submitted to~~
1427 ~~other state agencies to satisfy the requirements of this section if such forms contain substantially~~
1428 ~~the same information required by the Common Interest Community Board.~~

1429 C. The association shall also remit to the agency an annual payment as follows:

1430 1. The lesser of:

1431 a. \$1,000 or such other amount as established by agency regulation; or

1432 b. Five hundredths of one percent (0.05%) of the association's gross assessment income
1433 during the preceding year.

1434 2. For the purposes of subdivision 1 b, no minimum payment shall be less than \$10.~~00~~.

1435 D. C. The annual payment shall be remitted to the State Treasurer and shall be ~~placed to~~
1436 ~~the credit of~~ credited to the Common Interest Community Management Information Fund
1437 established pursuant to § ~~55-529~~ 55.1-xxx.

1438 **Drafting note: Subsection B is removed as unnecessary; per subsection A, the**
1439 **referenced annual report form is prescribed by the Common Interest Community Board**
1440 **regulations. Technical changes are made.**

1441 § ~~55-516.2~~ 55.1-xxx. Condemnation of common area; procedure.

When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment ~~therefor~~ for such portion shall be paid to the association, which shall be a party in interest in the condemnation proceeding. The common area that is affected shall be valued on the basis of the common area's highest and best use as though it were free from restriction to sole use as a common area.

Except to the extent that the declaration or any rules and regulations duly adopted pursuant ~~thereto~~ to such declaration otherwise provide, the board of directors shall have the authority to negotiate with the condemning authority, agree to an award or payment amount with the condemning authority without instituting condemnation proceedings, and, upon such agreement, convey the subject common area to the condemning authority. Thereafter, the president of the association may unilaterally execute and record the deed of conveyance to the condemning authority.

A member of the association, by virtue of his membership, shall be estopped from contesting the action of the association in any proceeding held pursuant to this section.

Drafting note: Technical changes are made.

#

1 CHAPTER ~~4.2~~ XX.

2 VIRGINIA CONDOMINIUM ACT.

3 **Drafting note:** Existing Chapter 4.2, the Virginia Condominium Act, is retained as
4 proposed Chapter XX. Articles 1, 2, and 3 of existing Chapter 4.2 are retained in that
5 order in this proposed chapter. Article 4 of existing Chapter 4.2 is logically reorganized as
6 proposed Articles 4 and 5 of this chapter.

7 Article 1.

8 General Provisions.

9 **Drafting note:** Existing Article 1, containing general provisions for the Virginia
10 Condominium Act, is retained as proposed Article 1.

11 ~~§ 55-79.39. How chapter cited.~~

12 ~~This chapter shall be known and may be cited as the "Condominium Act."~~

13 **Drafting note:** Existing § 55-79.39 is recommended for repeal on the basis of § 1-
14 244, 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 ~~§ 55-79.41~~ § 55.1-xxx. Definitions.

17 ~~When As~~ used in this chapter, unless the context requires a different meaning:

18 "Capital components" means those items, whether or not a part of the common elements,
19 for which the unit owners' association has the obligation for repair, replacement, or restoration
20 and for which the executive ~~organ~~ board determines funding is necessary.

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

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

25 "Common interest community manager" means the same as that term is defined in §
26 54.1-2345.

27 "Condominium" means real property, and any incidents ~~thereto~~ to or interests ~~therein~~ in
28 such real property, lawfully ~~submitted~~ subject to this chapter by the recordation of condominium
29 instruments pursuant to the provisions of this chapter. No project shall be deemed a
30 condominium within the meaning of this chapter unless the undivided interests in the common
31 elements are vested in the unit owners.

32 "Condominium instruments" ~~is a collective term referring to~~ means, collectively, the
33 declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter.
34 Any exhibit, schedule, or certification ~~accompanying~~ recorded with a condominium instrument
35 ~~and recorded simultaneously therewith~~ shall be deemed an integral part of that condominium
36 instrument. ~~Any Once recorded, any~~ amendment or certification of any condominium
37 instrument shall, ~~from the time of the recordation of such amendment or certification,~~ be
38 deemed an integral part of the affected condominium instrument, ~~so long as if~~ such amendment
39 or certification was made in accordance with the provisions of this chapter.

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

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

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

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

54 "Convertible space" means a portion of a structure within the condominium, ~~which~~
55 ~~portion that a declarant~~ may ~~be converted~~ convert into one or more units ~~and/or or~~ common
56 elements, including ~~but not limited to~~ limited common elements, in accordance with the
57 provisions of the declaration and this chapter. ~~(Cf. the definition of unit, infra.)~~

58 "Declarant" means any person, or group of persons acting in concert, that (i) offers to
59 dispose of ~~his or~~ its interest in a condominium unit not previously disposed of, including an
60 institutional lender ~~which that~~ may not have succeeded to or accepted any special declarant
61 rights pursuant to § ~~55-79.74:3~~ 55.1-xxx; (ii) reserves or succeeds to any special declarant right;
62 or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and
63 (iii), ~~the term~~ "declarant" ~~shall~~ does not include an institutional lender ~~which that~~ acquires title
64 by foreclosure or deed in lieu ~~thereof of foreclosure~~ unless such lender offers to dispose of its
65 interest in a condominium unit not previously disposed of to anyone not in the business of
66 selling real estate for his own account, except as otherwise provided in § ~~55-79.74:3~~ 55.1-xxx.
67 ~~The term "declarant" shall~~ "Declarant" does not include an individual who acquires title to a
68 condominium unit at a foreclosure sale.

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

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

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

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

83 ~~"Financial update" means an update of the financial information referenced in~~
84 ~~subdivisions C 2 through C 7 of § 55-79.97.~~

85 "Future common expenses" means common expenses for which assessments are not yet
86 due and payable.

87 "Identifying number" means one or more letters ~~and/or~~ or numbers that identify only one
88 unit in the condominium.

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

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

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

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

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

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

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

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

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, ~~but need not~~, be considered substantially identical within the meaning of ~~this subsection~~ §§ 55.1-xxx and 55.1-xxx [§§ 55-79.55 and 55-79.56]. If par value is stated in

~~terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.~~

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

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

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

"Settlement agent" means the same as that term is defined in § ~~55-525.16~~ 55.1-xxx.

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

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both; (iv) appoint or remove any officers of the unit owners' association or the executive ~~organ board~~ pursuant to subsection A of § ~~55-79.74~~, 55.1-xxx; (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to

the unit owners' association, any officer, or the executive ~~organ,~~ board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § ~~55-79.66~~ 55.1-xxx.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. ~~(Cf. the definition of condominium unit, supra.)~~ For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection ~~(d)~~ D of § ~~55-79.62~~ 55.1-xxx.

"Unit owner" means one or more persons ~~who~~ that own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest ~~or interests~~ in the condominium ~~extend~~ extends for the entire balance of the unexpired term ~~or terms~~. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person ~~or persons~~ holding an interest in a condominium unit solely as security for a debt.

Drafting note: Throughout this section and the chapter, the term "executive organ" is replaced with "executive board" for consistency with the Uniform Common Interest Ownership Act adopted by the Uniform Law Commission. The definition "electronic transmission" has been changed to "electronic means" for consistency with the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). In the definitions of "common expenses," "convertible land," "convertible space," "identifying number," and "size," the term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all. In the definitions of "condominium unit," "convertible space," and "unit," the parenthetical explanatory language is deleted as unnecessary because the terms referred to for comparison are terms that are defined in this section. In the definitions of "convertible space" and "institutional lender," the phrase "but not limited to" is stricken after the term "including" and in the definition of "size," the phrase "without limitation" is deleted after the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." The definitions of "financial update" and "resale certificate update"

are relocated to proposed § 55.1-xxx [§ 55-79.97], which contains the definitions that related to resale disclosure required for condominiums. The definition of "meeting" is deleted because it is inconsistent with the provisions of proposed § 55.1-xxx [§ 55-79.75], in which rules are outlined for both association meetings and executive board meetings; the definition of "meeting" only applied to executive board meetings and created confusion. In the definitions of "offer," "purchaser," and "unit owner," the phrase "or persons" is stricken and in the definition of "unit owner," the phrases "or interests" and "or terms" are stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Substantive content in the definition of "nonbinding reservation agreement" is relocated to proposed subdivision 4 of § 55.1-xxx [§ 55-79.88], which deals with limitations on disposition of units. Substantive content in the definition of "par value" is relocated to proposed subsection A of § 55.1-xxx [§ 55-79.55], which outlines how par value is to be calculated. In the definition of "par value," "this subsection" is replaced with specific references to the sections of the chapter that deal with allocation and reallocation of interest in the common elements. In the definition of "size," reference to rounding to the nearest whole number of cubic or square feet is added for clarity and accuracy. Technical changes are made.

§ ~~55-79.40~~ 55.1-xxx. Application and construction of chapter.

A. This chapter ~~shall apply~~ applies to all condominiums and to all horizontal property regimes or condominium projects. ~~For the purposes of this chapter, the terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "co-owner" shall be deemed to correspond to the term "unit owner"; the term "council of co-owners" shall be deemed to correspond to the term "unit owners' association"; the term "developer" shall be deemed to correspond to the term "declarant"; the term "general common elements" shall be deemed to correspond to the term "common elements"; and the terms "master deed" and "master lease" shall be deemed to correspond to the term "declaration" and shall be~~

~~deemed included in the term "condominium instruments."~~ This chapter ~~shall be deemed to~~
~~supersede~~ supersedes the Horizontal Property Act, ~~§§ 55-79.1 through 55-79.38 (§ 55.1-xxx et~~
~~seq.),~~ and no condominium shall be established under ~~the latter~~ the Horizontal Property Act on
or after July 1, 1974. ~~But this~~ This chapter shall not be construed to affect the validity of any
provision of any condominium instrument recorded prior to July 1, 1974. ~~Nor shall Article 4 (§~~
~~55-79.86 et seq.) of this chapter be deemed to supersede §§ 55-79.16 through 55-79.31 of the~~
~~Horizontal Property Act as to any condominiums established prior to the effective date hereof.~~
For the purposes of this chapter, as used in the Horizontal Property Act (§ 55.1-xxx et seq.):

"Apartment" corresponds to the term "unit."

"Co-owner" corresponds to the term "unit owner."

"Council of co-owners" corresponds to the term "unit owners' association."

"Developer" corresponds to the term "declarant."

"General common elements" corresponds to the term "common elements."

"Horizontal property regime" and "condominium project" corresponds to the term
"condominium."

"Master deed" and "master lease" correspond to the term "declaration" and are included
in the term "condominium instruments."

B. This chapter ~~shall~~ does not apply to condominiums located outside the
Commonwealth. Sections ~~55-79.88 55.1-xxx~~ through ~~55-79.94 55.1-xxx~~ and §§ ~~55-79.98 55.1-~~
~~xxx~~ through ~~55-79.103 55.1-xxx~~ ~~shall apply~~ apply to all contracts for the disposition of
condominium units signed in the Commonwealth by any person, unless exempt under § ~~55-~~
~~79.87 55.1-xxx~~.

C. Subsection B of § ~~55-79.79 55.1-xxx~~ and § ~~55-79.94 55.1-xxx~~ do not apply to the
declarant of a conversion condominium if that declarant is a proprietary lessees' association that,
immediately before the creation of the condominium, owned fee simple title to or a fee simple
reversionary interest in the real estate described pursuant to subdivision ~~(a) (3) A 3~~ of § ~~55-~~
~~79.54 55.1-xxx~~.

Drafting note: In subsection A, language stating that certain sections of existing Article 4 of the Virginia Condominium Act do not supersede certain sections of the existing Horizontal Property Act is recommended for deletion; the sections of the Horizontal Property Act referenced in subsection A are obsolete as of July 1, 1974, the date upon which the Virginia Condominium Act superseded the Horizontal Property Act. As of July 1, 1974, no new developments have been established under a horizontal property regime due to the Act's obsolescence. The corresponding term definitions are relocated to the end of subsection A and reorganized as definitions for consistency with similar provisions in the proposed Property Owners' Association Act (§ 55.1-xxx et seq.).

Technical changes are made.

§ ~~55-79.41~~ 55.1-xxx. Variation by agreement.

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

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

§ ~~55-79.42~~ 55.1-xxx. Separate assessments, titles, and taxation.

Except as otherwise provided in ~~the following sentence~~ this section, each condominium unit constitutes ~~for all purposes~~ a separate parcel of real estate. If there is any unit owner other than the declarant, each unit, together with its common element interest, but excluding its common element interest in convertible land and in any withdrawable land within which the declarant has the right to create units ~~and/or or~~ limited common elements, shall be separately assessed and taxed. Each convertible land and withdrawable land within which the declarant has the right to create units ~~and/or or~~ limited common elements shall be separately assessed and taxed against the declarant.

Drafting note: The term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all. Technical changes are made.

~~§ 55-79.42:1~~ § 55.1-xxx. Association charges.

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under ~~§ 55-79.83~~ § 55.1-xxx, (ii) a fee for services provided, or (iii) related to the provisions set out in ~~§ 55-79.97:1~~ § 55.1-xxx. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349; and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

Drafting note: No change.

~~§ 55-79.43~~ § 55.1-xxx. ~~County and municipal~~ Local ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations.

A. No zoning or other land use ordinance shall prohibit condominiums ~~as such by reason solely on the basis~~ of the form of ownership ~~inherent therein. Neither, nor~~ shall any condominium be treated differently by any zoning or other land use ordinance ~~which that~~ would permit a physically identical project or development under a different form of ownership. Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.

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

condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

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

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

In accordance with subsection B of § ~~55-79.80~~ 55.1-xxx, once the declarant no longer has such authority, the executive ~~organ~~ board of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including ~~related~~ conditional zoning proffers and agreements ~~incidental thereto~~ that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and

occupancy permits, the unit owner, ~~(including the declarant if the declarant is the unit owner),~~
shall apply for permits for the unit, and the unit owners' association shall apply for permits for
the common elements, except that the declarant shall apply for permits for convertible land.

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

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

**Drafting note: In the catchline, the phrase "County and municipal" is replaced
with "Local" and in subsections B and E, the phrase "counties, cities, and towns" is**

replaced with the term "locality" on the basis of § 1-221, which states that throughout the Code "'Locality' means a county, city, or town as the context may require." In subsection D, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in § 55.1-xxx [§ 55-79.41]. In subsection E, language is re-worded for clarity. In subsection E, the terms "locality" and "sanitary district" are added to the list of local authorities that may impose fees on conversion condominiums for internal consistency in the subsection. Also in subsection E, changes are made to use the active voice. Technical changes are made.

§ ~~55-79.44~~ 55.1-xxx. Eminent domain.

~~(a)~~ A. If any portion of the common elements is taken by eminent domain, the award ~~therefor~~ for such taking shall be paid to the unit owners' association. ~~Provided,~~ provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking ~~thereof~~ of such limited common element shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element ~~which that~~ cannot be reassigned or ~~which that~~ can be reassigned only with the consent of the unit owner ~~or owners~~ of the unit ~~or units~~ to which it is assigned in accordance with § ~~55-79.57~~ 55.1-xxx.

~~(b)~~ B. If one or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced ~~thereby by such taking~~, and the award shall include, ~~without limitation,~~ just

compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

~~(e)~~ C. 1. If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced, in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking.

2. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with ~~the preceding sentence~~ subdivision 1.

3. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, ~~without limitation~~, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested ~~from him~~ by operation of ~~the first sentence of this subsection~~ subdivision 1 and not revested ~~in him~~ by operation of ~~the following sentence~~ subdivision 2, as well as for that portion of his unit taken by eminent domain.

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

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

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

Drafting note: In proposed subsections B, C, and D, the phrase "without limitation" is stricken after the term "include" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In proposed subsection C, subdivisions are added for clarity with internal cross-references. In proposed subsections A and E, plural usage of owners and units are stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

Article 2.

Creation, Alteration, and Termination of Condominiums.

Drafting note: Existing Article 2, containing sections related to the creation, alteration, and termination of condominiums, is retained as proposed Article 2.

§ ~~55-79.45~~ 55.1-xxx. How condominium may be created.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections A and B of § ~~55-79.58~~ 55.1-xxx. ~~The foreclosure of any mortgage,~~

~~deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.~~

Drafting note: The last sentence is relocated to proposed § 55.1-xxx [§ 55-79.72:1], which outlines how condominiums may be terminated.

~~§ 55-79.46~~ 55.1-xxx. Release of liens.

A. At the time of the conveyance to the first purchaser of ~~each~~ a condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion ~~thereof of the condominium~~ than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have ~~the said such~~ condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as ~~any time limit~~ the period of declarant control specified ~~pursuant to in~~ § ~~55-79.74~~ 55.1-xxx has expired, and so long as the bylaws authorize ~~the same~~ such action. This subsection ~~shall~~ does not apply to any lien on more than one condominium unit in a condominium in which all units are restricted to nonresidential use and in which all unit owners whose condominium units will be subject to such lien expressly agree to assume or take subject ~~thereto~~ to such lien.

B. ~~In the event that~~ If any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to subsection D of § ~~55-79.83~~ 55.1-xxx. Subsequent to such payment, discharge, or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his

condominium unit in accordance with the provisions of § ~~55-66.4~~ 55.1-xxx, and the unit owners' association shall not assess, or have a valid lien against, that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ ~~55-79.83~~ 55.1-xxx and ~~55-79.84~~ 55.1-xxx.

Drafting note: In subsection A, the phrase "any time limit" is replaced with "the period of declarant control" to provide clarity and consistency with the cross reference to proposed § 55.1-xxx [§ 55-79.74]. Technical changes are made.

§ ~~55-79.47~~ 55.1-xxx. Description of condominium units.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm ~~which if it~~ sets forth the identifying number of that unit, the name of the condominium, the name of the county or city ~~or county~~ wherein in which the condominium is situated, and either the deed book and page number where the first page of the declaration is recorded or ~~else~~ the document number assigned to the declaration by the clerk. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein in the description.

Drafting note: Technical changes.

§ ~~55-79.48~~ 55.1-xxx. Execution of condominium instruments.

The declaration and bylaws, and any amendments to either made pursuant to § ~~55-79.71~~ 55.1-xxx, shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. ~~But the~~ The phrase "owners and lessees" in ~~the preceding sentence~~ this section and in § ~~55-79.63~~ 55.1-xxx does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale ~~and/or~~ or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium, or, in the case of a

leasehold condominium subject to any lease~~or leases~~ executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

Drafting note: The term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all. The phrase "or leases" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

§ ~~55-79.49~~ 55.1-xxx. Recordation of condominium instruments.

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

Drafting note: The last sentence is stricken as unnecessary: throughout the Code, the disjunctive "or" is used to mean either or both/all and § 1-227 states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

§ ~~55-79.50~~ 55.1-xxx. Construction of condominium instruments.

Except to the extent otherwise provided by the condominium instruments:

~~(a)~~ 1. The terms defined in § ~~55-79.41~~ 55.1-xxx shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context ~~otherwise~~ requires a different meaning.

(b) 2. To the extent that walls, floors ~~and/or, or~~ ceilings are designated as the boundaries of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces ~~thereof of such walls, floors, or ceilings, shall be deemed a~~ are part of such units, while all other portions of such walls, floors ~~and/or, or~~ ceilings ~~shall be deemed~~ are a part of the common elements.

(e) 3. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or ~~any~~ other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions ~~thereof~~ serving only that unit ~~shall be deemed~~ are a part of that unit, while any portions ~~thereof~~ serving more than one unit or any portion of the common elements ~~shall be deemed~~ are a part of the common elements.

(d) 4. Subject to the provisions of ~~subsection (e) hereof~~ subdivision 3, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit ~~shall be deemed~~ are a part of that unit.

(e) 5. Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios ~~and any, or~~ other apparatus designed to serve a single unit, but located outside the boundaries ~~thereof of such unit, shall be deemed a~~ are limited common ~~element~~ elements appertaining to that unit exclusively; ~~provided, except~~ that if a single unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover ~~shall be deemed~~ are a part of the common elements.

Drafting note: In proposed subdivision 2, the term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all. Technical changes are made.

~~§ 55-79.51~~ 55.1-xxx. Complementarity of condominium instruments; controlling construction.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of

one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction conformable consistent with the statute shall in all cases control over any inconsistent construction ~~inconsistent therewith~~.

Drafting note: Technical change.

~~§ 55-79.52~~ § 55.1-xxx. Validity of condominium instruments; discrimination prohibited.

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

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

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

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

Drafting note: Technical change.

~~§ 55-79.53~~ § 55.1-xxx. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive ~~organ~~ board or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of ~~§ 55-~~

~~79.80~~ 55.1-xxx. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section ~~shall~~ does not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

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

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

Drafting note: In subsections A and B, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Technical changes are made.

~~§ 55-79.54~~ 55.1-xxx. Contents of declaration.

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

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

589 ~~(2)~~ 2. The name of the county or city ~~or county~~ in which the condominium is located.

590 ~~(3)~~ 3. A legal description by metes and bounds of the land submitted ~~to~~ in accordance

591 with this chapter.

592 ~~(4)~~ 4. A description or delineation of the boundaries of the units, including the horizontal

593 (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.

594 ~~(5)~~ 5. A description or delineation of any limited common elements, other than those

595 ~~which that~~ are limited common elements by virtue of ~~subsection (e)~~ subdivision 5 of § ~~55-79.50~~

596 55.1-xxx, showing or designating the unit or units to which each is assigned.

597 ~~(6)~~ 6. A description or delineation of all common elements not within the boundaries of

598 any convertible lands ~~which that~~ may subsequently be assigned as limited common elements,

599 together with a statement that (i) they may be so assigned and a description of the method

600 ~~whereby by which~~ any such assignments shall be made in accordance with the provisions of §

601 ~~55-79.57~~ 55.1-xxx or (ii) once assigned, the conditions under which they may be unassigned and

602 converted to common elements in accordance with § ~~55-79.57~~ 55.1-xxx.

603 ~~(7)~~ 7. The allocation to each unit of an undivided interest in the common elements in

604 accordance with the provisions of § ~~55-79.55~~ 55.1-xxx.

605 ~~(7a)~~ 8. A statement of the extent of the declarant's obligation to complete improvements

606 labeled "~~(NOT YET COMPLETED)~~" or to begin and complete improvements labeled "~~(NOT~~

607 ~~YET BEGUN)~~" on plats recorded pursuant to the requirements of this chapter. Such statement

608 shall be specific as to the type and quality of materials to be used, the size or capacity of the

609 improvements, when material, and the time by which such improvements shall be completed.

610 ~~(8)~~ 9. Such other matters as the declarant deems appropriate.

611 ~~(b)~~ B. If the condominium contains any convertible land, the declaration shall also

612 contain the following:

613 ~~(1)~~ 1. A legal description by metes and bounds of each convertible land within the

614 condominium.

615 ~~(2)~~2. A statement of the maximum number of units that may be created within each such
616 convertible land.

617 ~~(3)~~3. A statement, with respect to each such convertible land, of the maximum
618 percentage of the aggregate land and floor area of all units that may be created ~~therein in such~~
619 convertible land that may be occupied by units not restricted exclusively to residential use. Such
620 statement is not required if none of the units on other portions of the submitted land are
621 restricted exclusively to residential use.

622 ~~(4)~~4. A statement of the extent to which any structure erected on any convertible land
623 will be compatible with structures on other portions of the submitted land in terms of quality of
624 construction, the principal materials to be used, and architectural style.

625 ~~(5)~~5. A description of all other improvements that may be made on each convertible
626 land within the condominium.

627 ~~(6)~~6. A statement that any units created within each convertible land will be
628 substantially identical to the units on other portions of the submitted land, or a statement
629 describing in detail what other types of units may be created ~~therein in such convertible land~~.

630 ~~(7)~~7. A description of the declarant's reserved right, if any, to create limited common
631 elements within any convertible land, ~~and/or or~~ to designate common elements ~~therein which in~~
632 such convertible land that may subsequently be assigned as limited common elements, in terms
633 of the types, sizes, and maximum number of such elements within each such convertible land.

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

638 ~~(e)~~C. If the condominium is an expandable condominium, the declaration shall also
639 contain the following:

640 ~~(1)~~1. The explicit reservation of an option to expand the condominium.

641 ~~(2)~~ 2. A statement of any limitations on that option, including, ~~without limitation,~~ a
642 statement as to whether the consent of any unit owners shall be required, and, if so, a statement
643 as to the method ~~whereby by which~~ such consent shall be ascertained, or a statement that there
644 are no such limitations.

645 ~~(3)~~ 3. A time limit, not exceeding 10 years ~~from~~ after the recording of the declaration,
646 upon which the option to expand the condominium shall expire, together with a statement of the
647 circumstances, if any, ~~which that~~ will terminate that option prior to the expiration of the time
648 limit so specified. After the expiration of any period of declarant control reserved pursuant to
649 subsection A of § ~~55-79.74~~ 55.1-xxx, such time limit may be extended by an amendment to the
650 declaration made pursuant to § ~~55-79.74~~ 55.1-xxx.

651 ~~(4)~~ 4. A legal description by metes and bounds of all land that may be added to the
652 condominium, henceforth referred to as "additional land."

653 ~~(5)~~ 5. A statement as to whether, if any of the additional land is added to the
654 condominium, all of it or any particular portion of it must be added, and, if not, a statement of
655 any limitations as to what portions may be added, or a statement that there are no such
656 limitations.

657 ~~(6)~~ 6. A statement as to whether portions of the additional land may be added to the
658 condominium at different times, together with any limitations fixing the boundaries of those
659 portions by legal descriptions setting forth the metes and bounds ~~thereof and/or of such portions~~
660 or regulating the order in which they may be added to the condominium.

661 ~~(7)~~ 7. A statement of any limitations as to the locations of any improvements that may be
662 made on any portions of the additional land added to the condominium, or a statement that no
663 assurances are made in that regard.

664 ~~(8)~~ 8. A statement of the maximum number of units that may be created on the additional
665 land. If portions of the additional land may be added to the condominium and the boundaries of
666 those portions are fixed in accordance with ~~item (6)~~ subdivision 6, the declaration shall also
667 state the maximum number of units that may be created on each such portion added to the

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

~~(9)~~ 9. A statement, with respect to the additional land and to any portion ~~or portions thereof of such additional land~~ that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created ~~thereon on such additional land~~ that may be occupied by units not restricted exclusively to residential use. Such statement is not required if none of the units on the submitted land are restricted exclusively to residential use.

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

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

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

~~(13)~~ 13. A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, ~~and/or or~~ to designate common elements ~~therein which in such additional land that~~ may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of

such elements within each such portion, or a statement that no assurances are made in those regards.

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

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

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

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

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

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

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

~~(6) 6.~~ A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend. This subdivision shall not be construed in

derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 55.1-xxx [§ 55-79.72:1].

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

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

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

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

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

~~Provided, that after~~ After the recording of the declaration, no lessor who executed ~~the same such declaration~~, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person ~~or persons~~ designated in the declaration for the receipt of such rent and who otherwise complies with all covenants ~~which that~~, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the

owner of the reversion or remainder ~~shall~~ does not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

~~(f)~~ F. Wherever this section requires a legal description by metes and bounds of land that is submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient description of any easements that are submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, as ~~the case may be~~ appropriate. In the case of each such easement, the declaration shall contain the following:

~~(1)~~ 1. A description of the permitted use or uses.

~~(2)~~ 2. If less than all of those entitled to the use of all of the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization.

~~(3)~~ 3. If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the ~~same~~ easement.

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

Drafting note: Language following proposed subdivision B 7 is stricken and relocated to proposed subdivision B 3 because it provides an exception that only applies to that subdivision. In proposed subdivisions B 7, C 6, C 13, D 5, and E 2, the term "and/or,"

a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all. In proposed subdivisions C 2, D 2, and E 2, the phrase "without limitation" is stricken after the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language following proposed subdivision C 13 is stricken and relocated to proposed subdivision C 9 because it provides an exception that only applies to that subdivision. Language following proposed subdivision D 6 is stricken and relocated to proposed subdivision D 6 because it provides an exception that only applies to that subdivision. Language following proposed subdivisions C 13 and D 6 is also clarified by stating that the plats may be recorded as "exhibits" to the declaration, which directs the clerks to record such documents with the declaration rather than assigning them a separate document number. In proposed subdivision E 2, the phrase "or leases" is stricken following the word "lease," and in the language following proposed subdivision E 3, the phrase "or persons" is stricken following the word "person" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

§ ~~55-79.55~~ 55.1-xxx. Allocation of interests in the common elements.

~~(a)~~ A. The declaration may allocate to each unit depicted on plats and plans that comply with subsections A and B of § ~~55-79.58~~ 55.1-xxx an undivided interest in the common elements proportionate to either the size or par value of each unit. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit or any undivided interest in the common elements, voting rights in the unit owners' association, or liability for common expenses assigned on the basis of such par value.

~~(b)~~ Otherwise, B. If the basis for allocation provided in subsection A is not used, then the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an

undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

~~(e) C.~~ The undivided interests in the common elements allocated in accordance with subsection ~~(a) A~~ or ~~(b) hereof B~~ shall add up to 1 if stated as fractions or ~~100%~~ 100 percent if stated as percentages.

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

~~(e) Otherwise,~~ E. Unless an equal undivided interest in the common elements is allocated to each unit, the undivided interest allocated to each unit in accordance with subsection ~~(a) or (b) hereof A or B~~ shall be reflected by a table in the declaration, or by an exhibit ~~or schedule accompanying to~~ the declaration ~~and recorded simultaneously therewith~~, containing three columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated ~~thereto to such units.~~

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

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

Drafting note: Language that is substantive content is relocated from the definition of "par value" in proposed § 55.1-xxx [55-79.41] to proposed subsection A of this section. Technical changes are made.

§ ~~55-79.56~~ 55.1-xxx. Reallocation of interests in common elements.

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

~~(1)~~ 1. Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections A and B of § ~~55-79.58~~, 55.1-xxx; or

~~(2)~~ 2. Prohibits the creation of any units not described pursuant to subdivision ~~(b)~~ (6) B 6 of § ~~55-79.54~~ (in 55.1-xxx, in the case of convertible lands), and subdivision ~~(c)~~ (12) C 12 of § ~~55-79.54~~ (in 55.1-xxx, in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

~~(b)~~ B. Interests in the common elements shall not be allocated to any units to be created within any convertible land or within any additional land until plats and plans depicting the same are recorded pursuant to subsection C of § ~~55-79.58~~, 55.1-xxx. But simultaneously with the recording of such plats and plans, the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common elements so that the units depicted on such plats and plans shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded simultaneously with the declaration pursuant to subsections A and B of § ~~55-79.58~~, 55.1-xxx.

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

~~(d)~~ D. In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium ~~which~~ that reduces the number of units, then the undivided interest in the common elements appertaining to any units ~~thereby~~ withdrawn from the condominium shall ~~thenceforth~~ then appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer ~~or officers~~ as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced ~~thereby~~ by such contraction.

Drafting note: In proposed subsection C, the phrase "without limitation" is stricken following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsections C and D, the phrase "or officers" is stricken after the term "officer," on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

~~§ 55-79.57~~ 55.1-xxx. Assignments of limited common elements; conversion to common element.

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

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other

881 officer ~~or officers~~ as the condominium instruments may specify. The officer ~~or officers~~ to whom
882 such application is duly made shall forthwith prepare and execute an amendment to the
883 declaration reassigning all rights and obligations with respect to the limited common element
884 involved. Such amendment shall be executed by all of the ~~unit owner or~~ unit owners ~~of the unit~~
885 ~~or units~~ concerned and recorded by an officer of the unit owners' association or his agent
886 following payment by the unit ~~owner or unit~~ owners of the ~~unit or~~ units concerned of all
887 reasonable costs for the preparation, acknowledgment, and recordation ~~thereof of such~~
888 amendment. The amendment ~~shall become~~ is effective when recorded.

889 C. A common element not previously assigned as a limited common element shall be so
890 assigned only ~~in pursuance of~~ pursuant to subdivision ~~(a) (6) A 6~~ of § ~~55-79.54 55.1-xxx~~. The
891 amendment to the declaration making such an assignment shall be prepared and executed by the
892 declarant, the principal officer of the unit owners' association, or by such other officer ~~or~~
893 ~~officers~~ as the condominium instruments may specify. Such amendment shall be recorded by the
894 declarant or his agent, without charge to any unit owner, or by an officer of the unit owners'
895 association or his agent following payment by all of the unit ~~owner or unit~~ owners of the ~~unit or~~
896 units concerned of all reasonable costs for the preparation, acknowledgment, and recordation
897 ~~thereof of such amendment~~. The amendment ~~shall become~~ is effective when recorded, and the
898 recordation ~~thereof of such amendment~~ shall be conclusive evidence that the method prescribed
899 pursuant to subdivision ~~(a) (6) A 6~~ of § ~~55-79.54 55.1-xxx~~ was adhered to. A copy of the
900 amendment shall be delivered to the unit ~~owner or unit~~ owners of the ~~unit or~~ units concerned. If
901 executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be
902 invalid because it was not prepared by an officer of the unit owners' association.

903 D. If the declarant does not prepare and record an amendment to the declaration to effect
904 the assignment of common elements as limited common elements in accordance with rights
905 reserved in the condominium instruments, but has reflected an intention to make such
906 assignments in deeds conveying units, then the principal officer of the unit owners' association

907 | may prepare, execute, and record such an amendment at any time after the declarant ceases to be
908 | a unit owner.

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

912 | **Drafting note: In subsections B and C, the phrase "or officers" is stricken after the**
913 | **term "officer," the phrase "or unit owners" is stricken after the term "unit owner," and**
914 | **the phrase "or units" is stricken after the term "unit" on the basis of § 1-227, which states**
915 | **that throughout the Code any word used in the singular includes the plural. Technical**
916 | **changes are made.**

917 | § ~~55-79.58~~ 55.1-xxx. Contents of plats and plans.

918 | A. There shall be recorded simultaneously with the declaration one or more plats of
919 | survey showing the location and dimensions of the submitted land, the location and dimensions
920 | of any convertible lands within the submitted land, the location and dimensions of any existing
921 | improvements, the intended location and dimensions of any contemplated improvements ~~which~~
922 | that are to be located on any portion of the submitted land other than within the boundaries of
923 | any convertible lands, and, to the extent feasible, the location and dimensions of all easements
924 | appurtenant to the submitted land or otherwise ~~submitted~~ subject to this chapter as a part of the
925 | common elements. If the submitted land is not contiguous, then the plats shall indicate the
926 | distances between the parcels constituting the submitted land. The plats shall label every
927 | convertible land as a convertible land, and if there is more than one such land, the plats shall
928 | label each such land with one or more letters ~~and/or~~ or numbers different from those designating
929 | any other convertible land and different also from the identifying number of any unit. The plats
930 | shall show the location and dimensions of any withdrawable lands, and shall label each such
931 | land as a withdrawable land. The plats shall show the location and dimensions of any additional
932 | lands and shall label each such land as an additional land. If, with respect to any portion ~~or~~
933 | portions, but less than all, of the submitted land, the unit owners are to own only an estate for

934 | years, the plats shall show the location and dimensions of any such ~~portions~~ portion, and shall
935 | label each such portion as a leased land. If there is more than one withdrawable land, or more
936 | than one leased land, the plats shall label each such land with one or more letters ~~and/or~~ or
937 | numbers different from those designating any convertible land or other withdrawable or leased
938 | land, and different also from the identifying number of any unit. The plats shall show all
939 | easements to which the submitted land or any portion ~~thereof~~ of such submitted land is subject,
940 | and shall show the location and dimensions of all such easements to the extent feasible. The
941 | plats shall also show all encroachments by or on any portion of the condominium. In the case of
942 | any improvements located or to be located on any portion of the submitted land other than
943 | within the boundaries of any convertible lands, the plats shall indicate which, if any, have not
944 | been begun by the use of the phrase "~~(NOT YET BEGUN);~~" and which, if any, have been begun
945 | but have not been substantially completed by the use of the phrase "~~(NOT YET~~
946 | ~~COMPLETED);~~" In the case of any units the vertical boundaries of which lie wholly or partially
947 | outside of structures for which plans pursuant to subsection B are simultaneously recorded, the
948 | plats shall show the location and dimensions of such vertical boundaries to the extent that they
949 | are not shown on such plans, and the units or portions thereof thus depicted shall bear their
950 | identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and
951 | compliance with the provisions of this subsection by a licensed land surveyor, and the ~~said~~
952 | surveyor shall certify in such document or on the face of the plat that all units or portions
953 | thereof of such units depicted ~~thereon~~ on such plat pursuant to the preceding sentence of this
954 | subsection have been substantially completed. The specification within this subsection of items
955 | that shall be shown on the plats shall not be construed to mean that the plats shall not also show
956 | all other items customarily shown or hereafter required for land title surveys.

957 | B. ~~There~~ Plans shall also be recorded, ~~simultaneously~~ with the declaration, ~~plans of.~~
958 | Such plans shall show every structure ~~which that~~ contains or constitutes all or part of any unit ~~or~~
959 | units; and ~~which that~~ is located on any portion of the submitted land other than within the
960 | boundaries of any convertible lands. The plans shall show the location and dimensions of the

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

C. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record, with regard to any structures on the land being converted, or added, either plats of survey conforming to the requirements of subsection A and plans conforming to the requirements of subsection B, or certifications, conforming to the certification requirements of ~~said such~~ subsections, of plats and plans previously recorded pursuant to § ~~55-79.59~~ 55.1-xxx.

D. Notwithstanding the provisions of ~~subsection~~ subsections A and B, a time-share interest in a unit ~~which~~ that has been subjected to a time-share instrument pursuant to § ~~55-367~~ 55.1-xxx may be conveyed prior to substantial completion of that unit if (i) a completion bond has been filed in compliance with subsection B of § ~~55-79.58:1~~ 55.1-xxx and remains in full

force and effect until the unit is certified as substantially complete in accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to the purchaser in writing, based on information provided by the Common Interest Community Board, that the bond has been filed with the Common Interest Community Board.

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

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall ~~bear~~ show the identifying number ~~or numbers~~ of the unit ~~or units~~ to which it is assigned, if it has been assigned, unless the provisions of ~~subsection (e) subdivision 5~~ of § ~~55-79.50~~ 55.1-xxx make such designations unnecessary.

Drafting note: In subsections A and E, the term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all. In subsection F, the words "or numbers" and "or units" are stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

§ ~~55-79.58-1~~ 55.1-xxx. Bond to insure completion of improvements.

A. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's obligation as stated in the declaration, of all improvements to the common

elements of the condominium labeled in the plat or plats as "~~(NOT YET COMPLETED)~~" or "~~(NOT YET BEGUN)~~" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete ~~said such~~ improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of ~~§ 55-79.58~~ § 55.1-xxx. The bond required by this subsection shall be conditioned upon the faithful performance of the declarant's obligation to complete ~~said such~~ improvements in strict conformity with the plans and specifications for the same as described in the declaration.

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

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

Drafting note: Technical changes.

§ 55-79.59. Preliminary recordation of plats and plans.

Plats and plans previously recorded pursuant to subsections A, B, and C of § 55-79.54 (a), (b) and (c) 55.1-xxx may be used in lieu of new plats and plans to satisfy in whole or in part the requirements of subsection B of § 55-79.56 (b) 55.1-xxx, subsection B of § 55-79.61 B and/or § 55-79.63 55.1-xxx, or § 55.1-xxx if certifications ~~thereof of such plats and plans~~ are recorded by the declarant in accordance with subsections A and B of § 55-79.58 A and B 55.1-xxx; and if such certifications are recorded, the plats and plans ~~which that~~ they certify shall be deemed recorded pursuant to subsection C of § 55-79.58 C 55.1-xxx within the meaning of ~~the~~

~~three sections aforesaid §§ 55.1-xxx [§ 55-79.56], 55.1-xxx [§ 55-79.61], and 55.1-xxx [§ 55-79.63].~~ All condominium instruments for condominiums created prior to July 1, 1991, are hereby validated notwithstanding that the plats were prerecorded as if in compliance with this section and not recorded with amendments converting convertible land or adding additional land if the plats or subsequent amendments contained the required certifications.

Drafting note: Technical changes.

~~§ 55-79.60~~ 55.1-xxx. Easement for encroachments.

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

Drafting note: Technical change.

~~§ 55-79.61~~ 55.1-xxx. Conversion of convertible lands.

A. The declarant may convert all or any portion of any convertible land into one or more units ~~and/or or~~ limited common elements subject to any restrictions and limitations ~~which that~~ the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B of this section and subsection C of ~~§ 55-79.58~~ 55.1-xxx.

B. Simultaneously with the recording of plats and plans pursuant to subsection C of ~~§ 55-79.58~~ 55.1-xxx, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with subsection ~~(b)~~ B of ~~§ 55-79.56~~ 55.1-xxx. Such

1069 amendment shall describe or delineate ~~the~~ any limited common elements formed out of the
1070 convertible land, showing or designating the unit ~~or units~~ to which each is assigned.

1071 C. All convertible lands shall be deemed a part of the common elements except for such
1072 portions ~~thereof~~ of such convertible lands as are converted in accordance with the provisions of
1073 this section. Until the expiration of the period during which conversion may occur or until actual
1074 conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes
1075 assessed against the convertible land and any improvements ~~thereon~~ on such convertible land
1076 and all other expenses in connection with that real estate, and no other unit owner and no other
1077 portion of the condominium shall be subject to a claim for payment of those taxes or expenses,
1078 and, unless the declaration provides otherwise, any income or proceeds from the convertible
1079 land and any improvements ~~thereon~~ on such convertible land shall inure to the declarant. No
1080 such conversion shall occur after 10 years from the recordation of the declaration, or such
1081 shorter period of time as the declaration may specify.

1082 **Drafting note: In subsection A, the term "and/or," a grammatical shortcut that is**
1083 **inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of**
1084 **either or both/all. In subsection B, the phrase "or units" is stricken following the term**
1085 **"unit" on the basis of § 1-227, which states that throughout the Code any word used in the**
1086 **singular includes the plural. Technical changes are made.**

1087 § ~~55-79.62~~ 55.1-xxx. Conversion of convertible spaces.

1088 ~~(a)~~ A. The declarant may convert all or any portion of any convertible space into one or
1089 more units ~~and/or~~ or common elements, including, ~~without limitation,~~ limited common
1090 elements, subject to any restrictions and limitations ~~which~~ that the condominium instruments
1091 may specify. Any such conversion shall be deemed to have occurred at the time of the
1092 recordation of appropriate instruments pursuant to subsection ~~(b)~~ hereof B and subsection B of §
1093 ~~55-79.58~~ 55.1-xxx.

1094 ~~(b)~~ B. Simultaneously with the recording of plats and plans pursuant to subsection E of §
1095 ~~55-79.58~~ 55.1-xxx, the declarant shall prepare, execute, and record an amendment to the

1096 declaration describing the conversion. Such amendment shall assign an identifying number to
1097 each unit formed out of a convertible space and shall allocate to each unit a portion of the
1098 undivided interest in the common elements appertaining to that space. Such amendment shall
1099 describe or delineate ~~the~~ any limited common elements formed out of the convertible space,
1100 showing or designating the unit ~~or units~~ to which each is assigned.

1101 ~~(e)~~ C. If all or any portion of any convertible space is converted into one or more units in
1102 accordance with this section, the declarant shall prepare and execute, and record simultaneously
1103 with the amendment to the declaration, an amendment to the bylaws. The amendment to the
1104 bylaws shall reallocate votes in the unit owners' association, rights to future common profits,
1105 and liabilities for future common expenses not specially assessed, all as in the case of the
1106 subdivision of a unit in accordance with subsection D of § ~~55-79.70~~ 55.1-xxx.

1107 ~~(d)~~ D. Any convertible space not converted in accordance with the provisions of this
1108 section, or any portion ~~or portions thereof of such convertible space~~ not so converted, shall be
1109 treated for all purposes as a single unit until and unless it is so converted, and the provisions of
1110 this chapter shall be deemed applicable to any such convertible space, or portion ~~or portions~~
1111 thereof of such convertible space, as though the same were a unit.

1112 **Drafting note: In proposed subsection A, the term "and/or," a grammatical**
1113 **shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its**
1114 **meaning in the sense of either or both/all. In proposed subsection A, the phrase "without**
1115 **limitation" is stricken following the term "including" on the basis of § 1-218, which states**
1116 **that throughout the Code "'Includes' means includes, but not limited to." In proposed**
1117 **subsection B, the phrase "or units" is stricken following the term "unit" on the basis of §**
1118 **1-227, which states that throughout the Code any word used in the singular includes the**
1119 **plural. Technical changes are made.**

1120 § ~~55-79.63~~ 55.1-xxx. Expansion of condominium.

1121 No condominium shall be expanded except in accordance with the provisions of the
1122 declaration and of this chapter. Any such expansion shall be deemed to have occurred at the

time of the recordation of plats and plans pursuant to subsection C of § ~~55-79.58~~ 55.1-xxx, together with an amendment to the declaration, duly executed by the declarant, including, ~~without limitation~~, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of subsection ~~(b)~~ B of § ~~55-79.56~~ 55.1-xxx. Such amendment may create convertible or withdrawable lands or both within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to subdivision ~~(d)~~ (3) D 3 of § ~~55-79.54~~ 55.1-xxx and subsection C of § ~~55-79.61~~ 55.1-xxx.

Drafting note: The phrase "without limitation" is stricken following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made.

§ ~~55-79.64~~ 55.1-xxx. Contraction of condominium.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to subdivision ~~(d)~~ (5) D 5 of § ~~55-79.54~~ 55.1-xxx, then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit ~~thereon~~.

Drafting note: Technical changes.

§ ~~55-79.65~~ 55.1-xxx. Easement to facilitate conversion and expansion.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the

provisions of those instruments and of this chapter; and for the purpose of doing all things reasonably necessary and proper in connection ~~therewith~~ with making such improvements.

Drafting note: Technical changes.

~~§ 55-79.66~~ 55.1-xxx. Easement to facilitate sales.

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

Drafting note: The term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all." Technical changes are made.

~~§ 55-79.67~~ 55.1-xxx. Declarant's obligation to complete and restore.

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

1177 regard ~~thereto~~ to such land, or imposing any obligations with regard to anything that is or is not
1178 to be done on or with regard to the condominium or any portion ~~thereof~~ of such condominium,
1179 this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

1180 ~~(a1)~~ B. The declarant shall complete all improvements labeled "~~(NOT YET~~
1181 COMPLETED)" on plats recorded pursuant to the requirements of this chapter unless the
1182 condominium instruments expressly exempt the declarant from such obligation, and shall, in the
1183 case of every improvement labeled "~~(NOT YET BEGUN)~~" on such plats, state in the declaration
1184 either the extent of the obligation to complete the same or that there is no such obligation.

1185 ~~(b)~~ C. To the extent that damage is inflicted on any part of the condominium by any
1186 person ~~or persons~~ utilizing the easements reserved by the condominium instruments or created
1187 by §§ ~~55-79.65~~ 55.1-xxx and ~~55-79.66~~ 55.1-xxx, the declarant together with ~~the any~~ person ~~or~~
1188 ~~persons~~ causing the same shall be jointly and severally liable for the prompt repair ~~thereof~~ of
1189 such damage and for the restoration of the same to a condition compatible with the remainder of
1190 the condominium.

1191 **Drafting note: In proposed subsection C, the phrase "or persons" is stricken**
1192 **following the term "person" on the basis of § 1-227, which states that throughout the Code**
1193 **any word used in the singular includes the plural. Technical changes are made.**

1194 § ~~55-79.68~~ 55.1-xxx. Alterations within units.

1195 ~~(a)~~ A. Except to the extent prohibited, restricted, or limited by the condominium
1196 instruments, ~~and subject to any restrictions and limitations specified therein~~, any unit owner may
1197 make any improvements or alterations within his unit that do not impair the structural integrity
1198 of any structure or otherwise lessen the support of any portion of the condominium. ~~But~~
1199 However no unit owner shall do anything ~~which~~ that would change the exterior appearance of
1200 his unit or of any other portion of the condominium except to such extent and subject to such
1201 conditions as the condominium instruments may specify.

1202 ~~(b)~~ B. If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining
1203 unit, then such unit owner shall have the right to remove all or any part of any intervening

partition or to create doorways or other apertures ~~therein in such unit~~, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § ~~55-79.69~~ 55.1-xxx.

Drafting note: In proposed subsection A, language is re-worded for clarity. Technical changes are made.

§ ~~55-79.69~~ 55.1-xxx. Relocation of boundaries between units.

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

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

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

1230 D. If the unit owners of the units involved have specified in their written application a
1231 reasonable reallocation as between the units involved of the aggregate number of votes in the
1232 unit owners' association allocated to those units, an amendment to the bylaws shall reflect that
1233 reallocation and a proportionate reallocation of liability for common expenses as between those
1234 units.

1235 E. Such plats and plans as may be necessary to show the altered boundaries between the
1236 units involved together with their other boundaries shall be prepared, and the units depicted
1237 ~~thereon~~ on such plats and plans shall bear their identifying numbers. Such plats and plans shall
1238 indicate the new dimensions of the units involved, and any change in the horizontal boundaries
1239 of either as a result of the relocation of their boundaries shall be identified with reference to
1240 established datum. Such plats and plans shall be certified as to their accuracy and compliance
1241 with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and
1242 (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

1243 F. When appropriate instruments in accordance with ~~the preceding subsections hereof~~
1244 this section have been prepared, executed, and acknowledged, they shall be recorded by an
1245 officer of the unit owners' association following payment by the unit owners of the units
1246 involved of all reasonable costs for the preparation, acknowledgment, and recordation ~~thereof of~~
1247 such instruments. ~~Said Such~~ instruments ~~shall become~~ are effective when executed by the unit
1248 owners of the units involved and recorded, and the recordation ~~thereof shall be of such~~
1249 instruments is conclusive evidence that the relocation of boundaries ~~thus so~~ effectuated did not
1250 violate any restrictions or limitations specified by the condominium instruments and that any
1251 reallocations made pursuant to subsections C and D were reasonable.

1252 G. Any relocation of boundaries between adjoining units shall be governed by this
1253 section and not by § ~~55-79.70~~ 55.1-xxx. Section ~~55-79.70~~ 55.1-xxx shall apply only to such
1254 subdivisions of units as are intended to result in the creation of two or more new units in place
1255 of the subdivided unit.

Drafting note: In subsection B, the phrase "or officers" is stricken following the term "officer" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

~~§ 55-79.70~~ § 55.1-xxx. Subdivision of units.

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

B. If the unit owner of any unit ~~which~~ that may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer ~~or officers~~ as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall ~~henceforth~~ hereinafter be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections C, D₂, and E.

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

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

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

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

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

G. Notwithstanding the definition of "unit" found in § ~~55-79.41~~ 55.1-xxx and the provisions of subsection ~~(d) D~~ of § ~~55-79.62~~ 55.1-xxx, this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such convertible space, and any such unit shall be deemed a unit for the purposes of this section.

Drafting note: In subsection B, the phrase "or officers" is stricken following the term "officer" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

1309 § ~~55-79.71~~ 55.1-xxx. Amendment of condominium instruments.

1310 A. If there is no unit owner other than the declarant, the declarant may unilaterally
1311 amend the condominium instruments, and ~~the~~ an amendment ~~shall become signed by the~~
1312 declarant is effective upon ~~the~~ recordation ~~thereof if the amendment has been executed by the~~
1313 declarant. But this This section shall not be construed to nullify, limit, or otherwise affect the
1314 validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the
1315 right hereby conferred.

1316 B. If any of the units in the condominium is restricted exclusively to residential use and
1317 there is any unit owner other than the declarant, the condominium instruments shall be amended
1318 only by agreement of unit owners of units to which two-thirds of the votes in the unit owners'
1319 association appertain, or such larger majority as the condominium instruments may specify,
1320 except in cases for which this chapter provides different methods of amendment. If none of the
1321 units in the condominium is restricted exclusively to residential use, the condominium
1322 instruments may specify a majority smaller than the minimum specified in the preceding
1323 sentence.

1324 C. An action to challenge the validity of an amendment adopted by the unit owners'
1325 association pursuant to this section may not be brought more than one year after the amendment
1326 is recorded.

1327 D. Agreement of the required majority of unit owners to any amendment of the
1328 condominium instruments shall be evidenced by their execution of the amendment, or
1329 ratifications ~~thereof of such amendment~~, and the same ~~shall become~~ is effective when a copy of
1330 the amendment is recorded together with a certification, signed by the principal officer of the
1331 unit owners' association or by such other officer ~~or officers~~ as the condominium instruments
1332 may specify, that the requisite majority of the unit owners signed the amendment or ratifications
1333 thereof of such amendment.

1334 E. Except to the extent expressly permitted or expressly required by other provisions of
1335 this chapter, or agreed to by 100 percent of the unit owners, no amendment to the condominium

instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners' association that appertains to any unit.

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

Drafting note: Language in subsection A is reworded for clarity. In subsection C, the phrase "or officers" is stricken following the term "officer" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. In subsection F, the phrase "without limitation" is stricken following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsection F, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Technical changes are made.

~~§ 55-79.71-1~~ 55.1-xxx. Use of technology.

1363 A. Unless the condominium instruments expressly provide otherwise, (i) any notice
1364 required to be sent or received or (ii) any signature, vote, consent, or approval required to be
1365 obtained under any condominium instrument or any provision of this chapter may be
1366 accomplished using ~~the most advanced technology available at that time if such use is a~~
1367 ~~generally accepted business practice. This section shall govern the use of technology in~~
1368 ~~implementing the provisions of any condominium instrument or any provision of this chapter~~
1369 ~~dealing with notices, signatures, votes, consents, or approvals~~ electronic means.

1370 B. ~~Electronic transmission and other equivalent methods.~~ The unit owners' association,
1371 unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise
1372 any right under any condominium instrument or any provision of this chapter by use of ~~any~~
1373 ~~technological means providing sufficient security, reliability, identification, and verifiability.~~
1374 ~~"Acceptable technological means" shall include without limitation electronic transmission over~~
1375 ~~the Internet or the community or other network, whether by direct connection, intranet,~~
1376 ~~telecopier, or electronic mail~~ electronic means.

1377 C. ~~Signature requirements.~~ An electronic signature meeting the requirements of
1378 applicable law shall satisfy any requirement for a signature under any condominium instrument
1379 or any provision of this chapter.

1380 D. ~~Voting rights.~~ Voting, consent to, and approval of any matter under any condominium
1381 instrument or any provision of this chapter may be accomplished by electronic ~~transmission or~~
1382 ~~other equivalent technological~~ means provided that a record is created as evidence ~~thereof of~~
1383 such vote, consent, or approval and maintained as long as such record would be required to be
1384 maintained in nonelectronic form.

1385 E. ~~Acknowledgment not required.~~ Subject to other provisions of law, no action required
1386 or permitted by any condominium instrument or any provision of this chapter need be
1387 acknowledged before a notary public if the identity and signature of such person can otherwise
1388 be authenticated to the satisfaction of the executive ~~organ~~ board.

1389 F. ~~Nontechnology alternatives.~~ If any person does not have the capability or desire to
1390 conduct business using electronic ~~transmission or other equivalent technological~~ means, the unit
1391 owners' association shall make reasonable accommodation, at its expense, for such person to
1392 conduct business with the unit owners' association without use of such electronic ~~or other~~
1393 means.

1394 G. This section shall not apply to any notice related to an enforcement action by the unit
1395 owners' association, an assessment lien, or foreclosure proceedings in enforcement of an
1396 assessment lien.

1397 **Drafting note:** Throughout the section, references to "electronic transmission or
1398 other equivalent technological means" have been changed to "electronic means" for
1399 accuracy and consistency with the Uniform Electronic Transactions Act (§ 59.1-479 et
1400 seq.). Also throughout the section, subsection catchlines are stricken because such
1401 catchlines do not conform to Code style. In subsection E, the term "executive organ" is
1402 changed to "executive board" for consistency with the term as it is defined in proposed §
1403 55.1-xxx [§ 55-79.41]. In subsection B, the phrase "without limitation" is stricken
1404 following the term "include" on the basis of § 1-218, which states that throughout the
1405 Code "'Includes' means includes, but not limited to." Technical changes are made.

1406 ~~§ 55-79.71-2~~ 55.1-xxx. Merger or consolidation of condominiums; procedure.

1407 A. Any two or more condominiums, by agreement of the unit owners as provided in
1408 subsection B, may be merged or consolidated into a single condominium. In the event of a
1409 merger or consolidation, unless the agreement otherwise provides, the resultant condominium
1410 shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the
1411 operations and activities of all unit owners' associations of the preexisting condominiums shall
1412 be merged or consolidated into a single unit owners' association that holds all powers, rights,
1413 obligations, assets, and liabilities of all preexisting unit owners' associations.

1414 B. An agreement to merge or consolidate two or more condominiums pursuant to
1415 subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by

the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

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

D. If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation ~~shall become~~ is effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § ~~55-79.73:1~~ 55.1-xxx.

Drafting note: No change.

~~§ 55-79.72. Repealed.~~

Drafting note: Repealed by Acts 1993, c. 667.

~~§ 55-79.72:1~~ 55.1-xxx. Termination of condominium.

1442 A. If there is no unit owner other than the declarant, the declarant may unilaterally
1443 terminate the condominium. An instrument terminating a condominium ~~shall become~~ signed by
1444 the declarant is effective upon recordation ~~thereof if the termination instrument has been signed~~
1445 by the declarant of such instrument. But this section shall not be construed to nullify, limit, or
1446 otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in
1447 whole or in part, the right hereby conferred.

1448 B. Except in the case of a taking of all the units by eminent domain, if any of the units in
1449 the condominium is restricted exclusively to residential use and there is any unit owner other
1450 than the declarant, the condominium may be terminated only by the agreement of unit owners of
1451 units to which four-fifths of the votes in the unit owners' association appertain, or such larger
1452 majority as the condominium instruments may specify. If none of the units in the condominium
1453 is restricted exclusively to residential use, the condominium instruments may specify a majority
1454 smaller than the minimum specified in ~~the preceding sentence~~ this subsection.

1455 C. Agreement of the required majority of unit owners to termination of the condominium
1456 shall be evidenced by their execution of a termination agreement, or ratifications ~~thereof of such~~
1457 agreement, and ~~the same shall become~~ such agreement is effective when a copy of the
1458 termination agreement is recorded together with a certification, signed by the principal officer of
1459 the unit owners' association or by such other officer ~~or officers~~ as the condominium instruments
1460 may specify, that the requisite majority of the unit owners signed the termination agreement or
1461 ratifications ~~thereof~~. Unless the termination agreement otherwise provides, prior to recordation
1462 of the termination agreement, a unit owner's prior agreement to terminate the condominium may
1463 be revoked only with the approval of unit owners of units to which a majority of the votes in the
1464 unit owners' association appertain. The termination agreement shall specify a date after which
1465 the termination agreement ~~shall be~~ is void if the termination agreement is not recorded. For the
1466 purposes of this section, an instrument terminating a condominium and any ratification ~~thereof~~
1467 of such instrument shall be deemed a condominium instrument subject to the provisions of § ~~55-~~
1468 79.49 55.1-xxx.

1469 D. In the case of a condominium that contains only units having horizontal boundaries
1470 described in the condominium instruments, a termination agreement may provide that all of the
1471 common elements and units of the condominium shall be sold following termination. If,
1472 pursuant to the termination agreement, any property in the condominium is sold following
1473 termination, the termination agreement shall set forth the minimum terms of the sale.

1474 E. In the case of a condominium that contains any units not having horizontal boundaries
1475 described in the condominium instruments, a termination agreement may provide for sale of the
1476 common elements. The termination agreement may not require that the units be sold following
1477 termination, unless the condominium instruments as originally recorded provide otherwise or all
1478 the unit owners consent to the sale. In the case of a master condominium that contains a unit
1479 which that is a part of another condominium, a termination agreement for the master
1480 condominium shall not terminate the other condominium.

1481 F. On behalf of the unit owners, the unit owners' association may contract for the
1482 disposition of property in the condominium, but the contract shall not be binding on the unit
1483 owners until approved pursuant to subsections B and C ~~of this section~~. If the termination
1484 agreement requires that any property in the condominium be sold following termination, title to
1485 the property, upon termination, shall vest in the unit owners' association as trustee for the
1486 holders of all interest in the units. Thereafter, the unit owners' association shall have powers
1487 necessary and appropriate to effect the sale. Until the same termination has been concluded and
1488 the proceeds have been distributed, the unit owners' association shall continue in existence with
1489 all the powers the unit owners' association had before termination. Proceeds of the sale shall be
1490 distributed to unit owners and lien holders as their interests may appear, in proportion to the
1491 respective interests of the unit owners as provided in subsection I ~~of this section~~. Unless
1492 otherwise specified in the termination agreement, for as long as the unit owners' association
1493 holds title to the property, each unit owner or his successor in interest shall have an exclusive
1494 right to occupancy of the portion of the property that formerly constituted his unit. During the
1495 period of occupancy by the unit owner or his successor in interest, each unit owner or his

1496 successor in interest shall remain liable for any assessment or other obligation imposed on the
1497 unit owner by this chapter or the condominium instruments.

1498 G. If the property that constitutes the condominium is not sold following termination,
1499 title to the common elements and, in the case of a condominium containing only units that have
1500 horizontal boundaries described in the condominium instruments, title to all the property in the
1501 condominium shall vest in the unit owners, upon termination, as tenants in common in
1502 proportion to the unit owners' respective interests as provided in subsection I ~~of this section~~.
1503 Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit
1504 owner or his successor in interest shall have the exclusive right to occupancy of the portion of
1505 the property that formerly constituted the unit owner's unit.

1506 H. Following termination of the condominium, the proceeds of any sale of property,
1507 together with the assets of the unit owners' association, shall be held by the unit owners'
1508 association as trustee for unit owners or lien holders on the units as their interests may appear.
1509 Following termination, any creditor of the unit owners' association who holds a lien on the unit
1510 that was recorded before termination may enforce the lien in the same manner as any lien
1511 holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a
1512 lien on the units immediately before termination.

1513 I. Unless the condominium instruments as originally recorded or as amended by 100
1514 percent of the unit owners provide otherwise, the respective interests of unit owners referred to
1515 in subsections F, G, and H shall be as follows:

1516 1. Except as provided in subdivision 2, the respective interests of the unit owners shall
1517 be the fair market values of their units, limited common elements, and common element
1518 interests immediately before the termination, as determined by one or more independent
1519 appraisers selected by the unit owners' association. The decision of the independent appraisers
1520 shall be distributed to the unit owners and become final unless disapproved within ~~thirty~~ 30 days
1521 after distribution by unit owners of units to which ~~one-quarter~~ one quarter of the votes in the
1522 unit owners' association appertain. The proportion of any unit owner's interest to the interest of

1523 all unit owners is determined by dividing the fair market value of that unit owner's unit and
1524 common element interest by the total fair market values of all the units and their common
1525 element interests.

1526 2. If any unit or limited common element is destroyed to the extent that an appraisal of
1527 the fair market value ~~thereof~~ of such unit or limited common element before destruction cannot
1528 be made, the interests of all unit owners are the unit owners' respective common element
1529 interests immediately before the termination.

1530 J. Except as provided in subsection K, foreclosure or enforcement of a lien or
1531 encumbrance against the entire condominium shall not alone terminate the condominium, and
1532 foreclosure or enforcement of a lien or encumbrance against a portion of the condominium,
1533 other than withdrawable land, shall not withdraw that portion from the condominium.
1534 Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone
1535 withdraw the land from the condominium, but the person who takes title to the withdrawable
1536 land shall have the right to require from the unit owners' association, upon request, an
1537 amendment that excludes the land from the condominium.

1538 K. If a lien or encumbrance against a portion of the property that comprises the
1539 condominium has priority over the condominium instruments and the lien or encumbrance has
1540 not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance
1541 may record an instrument that excludes the property subject to the lien or encumbrance from the
1542 condominium.

1543 L. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex
1544 proprio vigore, to terminate the condominium.

1545 **Drafting note: Language in subsection A is reworded for clarity. In subsection C,**
1546 **the phrase "or officers" is stricken following the term "officer" on the basis of § 1-227,**
1547 **which states that throughout the Code any word used in the singular includes the plural.**
1548 **Proposed subsection L contains language logically relocated from proposed § 55.1-xxx [§**
1549 **55-79.45]. Technical changes are made.**

1550 § ~~55-79.72:2~~ 55.1-xxx. Rights of mortgagees.

1551 No provision of this chapter shall be construed in derogation of any requirement of the
1552 condominium instruments that all or a specified number of the beneficiaries of mortgages or
1553 deeds of trust encumbering the condominium units approve specified actions contemplated by
1554 the unit owners' association.

1555 **Drafting note: No change.**

1556 § ~~55-79.72:3~~ 55.1-xxx. Statement of unit owner rights.

1557 Every unit owner who is a member in good standing of a unit owners' association shall
1558 have the following rights:

1559 1. The right of access to all books and records kept by or on behalf of the unit owners'
1560 association according to and subject to the provisions of § ~~55-79.74:1~~ 55.1-xxx, including
1561 records of all financial transactions;

1562 2. The right to cast a vote on any matter requiring a vote by the unit owners' association
1563 membership in proportion to the unit owner's ownership interest, except to the extent that the
1564 condominium instruments provide otherwise;

1565 3. The right to have notice of any meeting of the executive ~~organ~~ board, to make a record
1566 of such meetings by audio or visual means, and to participate in such meeting in accordance
1567 with the provisions of § ~~55-79.75~~ 55.1-xxx;

1568 4. The right to have (i) notice of any proceeding conducted by the executive ~~organ~~ board
1569 or other tribunal specified in the condominium instruments against the unit owner to enforce any
1570 rule or regulation of the unit owners' association and (ii) the opportunity to be heard and
1571 represented by counsel at the proceeding, as provided in § ~~55-79.80:2~~ 55.1-xxx, and the right of
1572 due process in the conduct of that hearing; and

1573 5. The right to serve on the executive ~~organ~~ board if duly elected and a member in good
1574 standing of the unit owners' association, except to the extent that the condominium instruments
1575 provide otherwise.

The rights enumerated in this section shall be enforceable by any ~~such~~ unit owner pursuant to the provisions of § ~~55-79.53~~ 55.1-xxx.

Drafting note: In subdivisions 3, 4, and 5, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].

Article 3.

Management of Condominium.

Drafting note: Existing Article 3, containing provisions about the management of condominiums, is retained as proposed Article 3.

§ ~~55-79.73~~ 55.1-xxx. Bylaws to be recorded with declaration; contents; unit owners' association; executive ~~organ board~~; amendment of bylaws.

A. ~~There~~ Bylaws providing for governance of the condominium by an association of all of the unit owners shall be recorded simultaneously with the declaration ~~a set of bylaws providing for the self government of the condominium by an association of all the unit owners~~.

The unit owners' association may be incorporated.

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

specify which, if any, of its powers and responsibilities the unit owners' association or its executive ~~organ~~ board may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of § ~~55-79.53~~ 55.1-xxx.

D. In any case where an amendment to the declaration is required by subsection ~~(b), (c), or (d)~~ B, C, or D of § ~~55-79.56~~ 55.1-xxx, the person ~~or persons~~ required to execute ~~the same~~ such amendment shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § ~~55-79.58~~ 55.1-xxx or shall abolish the votes appertaining to former units, as ~~the case may be~~ appropriate. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the ~~said~~ amendment.

Drafting note: In the catchline and subsection B, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. In subsection D, the phrase "or persons" is stricken following the term "person" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

§ ~~55-79.73-1~~ 55.1-xxx. Amendment to condominium instruments; consent of mortgagee.

A. ~~In the event that~~ If any provision in the condominium instruments requires the written consent of a mortgagee in order to amend the condominium instruments, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address supplied by such mortgagee in a written request to the unit owners' association to receive notice of proposed amendments to the condominium instruments and receives no written objection to the adoption of the amendment from the

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

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

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

Drafting note: Technical changes.

§ ~~55-79.73:2~~ 55.1-xxx. Reformation of declaration; judicial procedure.

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

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

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

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

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

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

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

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

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

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

D. Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § ~~55-79.73:1~~ 55.1-xxx.

Drafting note: In subsection A, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].

Technical changes are made.

§ ~~55-79.74~~ 55.1-xxx. Control of condominium by declarant.

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

based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55-79.92 ~~hereof~~ and described pursuant to subdivision ~~(4) of subsection (a)~~ A 4, ~~subdivision (2) of subsection (b)~~ B 2, or ~~subdivision (8) of subsection (c)~~ C 8 of § ~~55-79.54~~ 55.1-xxx.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium; 3 three years in the case of a condominium ~~(other than an expandable condominium)~~ 2 containing any convertible land; 2 or two years in the case of any other condominium. Such time period shall ~~commence~~ begin upon settlement of the first unit to be sold in any portion of the condominium.

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

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § ~~55-79.75~~ 55.1-xxx a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive ~~organ~~ board and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § ~~55-79.79~~ 55.1-xxx and

1736 a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems
1737 necessary to protect his interest.

1738 C. If entered into any time prior to the expiration of the period of declarant control, no
1739 contract or lease entered into with the declarant or any entity controlled by the declarant,
1740 management contract, employment contract, or lease of recreational or parking areas or
1741 facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its
1742 executive ~~organ~~ board, or the unit owners as a group, shall be entered into for a period in excess
1743 of two years. Any such contract or agreement entered into on or after July 1, 1978, may be
1744 terminated without penalty by the unit owners' association or its executive ~~organ~~ board upon not
1745 less than 90 days' written notice to the other party given not later than 60 days after the
1746 expiration of the period of declarant control. Any such contract or agreement may be renewed
1747 for periods not in excess of two years; however, at the end of any two-year period the unit
1748 owners' association or its executive ~~organ~~ board may terminate any further renewals or
1749 extensions ~~thereof of such contract or agreement~~. The provisions of this subsection shall not
1750 apply to any lease ~~or leases which are~~ referred to in § ~~55-79.48~~ 55.1-xxx or ~~which are~~ subject to
1751 subsection ~~(e)~~ E of § ~~55-79.54~~ 55.1-xxx.

1752 D. If entered into at any time prior to the expiration of the period of declarant control,
1753 any contract, lease, or agreement, other than those subject to the provisions of subsection C,
1754 may be entered into by or on behalf of the unit owners' association, its executive ~~organ~~ board, or
1755 the unit owners as a group, if such contract, lease, or agreement is bona fide and is
1756 commercially reasonable to the unit owners' association at the time entered into under the
1757 circumstances.

1758 E. This section does not apply to any contract, incidental to the disposition of a
1759 condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for
1760 any term in excess of one year, nursing services, medical services, other health-related services,
1761 board and lodging and care as necessary, or any combination of such services. The rule of
1762 property law known as the rule restricting unreasonable restraints on alienation shall not be

1763 applied to defeat any provision of the condominium instruments requiring that the unit owners
1764 be parties to such contracts.

1765 F. If the unit owners' association is not in existence or does not have officers at the time
1766 of the creation of the condominium, the declarant shall, until there is such an association with
1767 such officers, have the power and the responsibility to act in all instances where this chapter
1768 requires action by the unit owners' association, its executive ~~organ~~ board, or any officer ~~or~~
1769 officers.

1770 G. Thirty days prior to the expiration of the period of declarant control, the declarant
1771 shall notify the governing body of the ~~city, county or town~~ locality in which the condominium is
1772 located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day
1773 period, the local governing body or an agency designated by the local governing body shall
1774 advise the principal elected officer of the condominium unit owners' association of any
1775 outstanding violations of applicable building codes, or local ordinances or other deficiencies of
1776 record.

1777 H. Within 45 days from the expiration of the period of declarant control, the declarant
1778 shall deliver to the president of the unit owners' association or his designated agent (i) all unit
1779 owners' association books and records held by or controlled by the declarant, including, ~~without~~
1780 ~~limitation, the following items:~~ minute books and all rules, regulations, and amendments ~~which~~
1781 ~~thereto to such rules and regulations that~~ may have been promulgated; (ii) a an accurate and
1782 complete statement of receipts and expenditures prepared using the accrual method of
1783 accounting from the date of the recording of the condominium instruments to the end of the
1784 regular accounting period immediately succeeding the first ~~election of the board of directors by~~
1785 annual meeting of the unit owners, not to exceed 60 days from the date of the election, such
1786 ~~statement being prepared in an accurate and complete manner, utilizing the accrual method of~~
1787 accounting; (iii) a copy of the latest available approved plans and specifications for all
1788 improvements in the project or as-built plans, if available; (iv) all association insurance policies
1789 ~~which that~~ are currently in force; (v) written unexpired warranties of the contractors,

subcontractors, suppliers, and manufacturers, if any; (vi)-~~any~~ contracts in which the association is a contracting party, if any; and (vii) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

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

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

Drafting note: In subsection A, the phrase "or persons" is stricken following the term "person," in subsection E, the phrase "or leases" is stricken following the term "lease," and in subsection F, the phrase "or officers" is stricken following the term "officer" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Throughout the section, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. In subsection A, the term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or both/all. In subsection G, the phrase "city, county, or town" is replaced with the term "locality" on the basis of § 1-221, which states that throughout the Code "'Locality' means a county, city, or town as the context may require." In subsection H, the phrase "without limitation" is stricken after the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsection H, the phrase "election of the board of directors" is replaced with "annual meeting" because there may not be a board of directors. Technical changes are made.

~~§ 55-79.74:01~~ 55.1-xxx. Deposit of funds.

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners'

association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

Drafting note: No change.

§ ~~55-79.74-1~~ 55.1-xxx. Books, minutes, and records; inspection.

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

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, ~~but not limited to,~~ the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are

drafts not yet incorporated into the ~~unit owners' association's~~ books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
 2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
 3. Pending or probable litigation. ~~Probable~~ For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a ~~party~~ person having standing to bring legal action or the legal counsel of a ~~party~~ such person;
 4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive ~~organ~~ board;
 5. Communications with legal counsel ~~which that~~ relates to subdivisions 1 through 4 or ~~which that~~ is protected by the attorney-client privilege or the attorney work product doctrine;
 6. Disclosure of information in violation of law;
 7. Meeting minutes or other confidential records of an executive session of the executive ~~organ~~ board held pursuant to subsection C of § ~~55-79.75~~ 55.1-xxx;
 8. Documentation, correspondence, or management or executive ~~organ~~ board reports compiled for or on behalf of the unit owners' association or the executive ~~organ~~ board by its agents or committees for consideration by the executive ~~organ~~ board in executive session; or
 9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.
- D. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, ~~reflecting not to exceed~~ the reasonable costs of materials and labor, not to exceed the actual costs thereof incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive ~~organ~~ board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii)

1869 apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit
1870 owner at the time the request is made.

1871 **Drafting note: In subsection B, the phrase "but not limited to" is stricken after the**
1872 **term "including" on the basis of § 1-218, which states that throughout the Code**
1873 **"'Includes' means includes, but not limited to." In subdivision C 3, the word "party" is**
1874 **replaced with "person having standing to bring legal action" because there is not yet**
1875 **pending litigation to which such person can be a party. In subsections C and D, the term**
1876 **"executive organ" is changed to "executive board" for consistency with the term as it is**
1877 **defined in proposed § 55.1-xxx [§ 55-79.41]. In subsection D, a sentence is re-organized for**
1878 **clarity. Technical changes are made.**

1879 ~~§ 55-79.74:2~~ § 55.1-xxx. Management office.

1880 Unless the condominium instruments expressly provide otherwise, the unit owners'
1881 association shall not be prohibited from maintaining a management office on common elements
1882 or in one or more units in the condominium.

1883 **Drafting note: No change.**

1884 ~~§ 55-79.74:3~~ § 55.1-xxx. Transfer of special declarant rights.

1885 A. For the purposes of this section, "affiliate of a declarant" means any person who
1886 controls, is controlled by, or is under common control with a declarant. A person controls a
1887 declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii)
1888 directly or indirectly, or acting in concert with one or more persons or through one or more
1889 subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than
1890 20 percent of the voting interests in the declarant; (iii) controls in any manner the election of a
1891 majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the
1892 capital of the declarant. A person is controlled by a declarant if the declarant (a) is a general
1893 partner, officer, director, or employer of the person; (b) directly or indirectly, or acting in
1894 concert with one or more other persons or through one or more subsidiaries, owns, controls,
1895 holds with power to vote, or holds proxies representing more than 20 percent of the voting

interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

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

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

1. The transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by subsection B of § ~~55-79.79~~ 55.1-xxx. Lack of privity shall not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

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

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

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

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

1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his request, succeed to all special declarant rights related to that land reserved by that declarant, or only to any rights reserved in the declaration pursuant to § ~~55-79.66~~ 55.1-xxx and held by that declarant to maintain sales offices, management offices, model units ~~and/or,~~ or signs.

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

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

~~D.E.~~ Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of all units and other land in the condominium owned by a declarant, (i) that declarant ceases to have any special declarant rights, and (ii) any period of declarant control reserved under subsection A of § ~~55-79.74~~ 55.1-xxx shall terminate, unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

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

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

2. A successor to any special declarant right, other than a successor described in subdivisions 3 and 4 ~~of this subsection~~, who is not an affiliate of a declarant shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments on a declarant, ~~which~~ that relate to his exercise or nonexercise of special declarant rights, or on his transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as provided in subsection B of § ~~55-79.79~~ 55.1-xxx on improvements made by any previous

1950 declarant or made before the condominium was created, (iii) breach of any fiduciary obligation
1951 by any previous declarant or his appointees to the executive ~~organ~~ board, or (iv) any liability or
1952 obligation imposed on the transferor as a result of the transferor's acts or omissions after the
1953 transfer.

1954 3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the
1955 declaration to maintain sales offices, management offices, model units ~~and/or, or~~ signs shall not
1956 exercise any other special declarant right and shall not be subject to any liability or obligation as
1957 a declarant, except the liabilities and obligations arising under Article 4 (§ ~~55-79.86~~ 55.1-xxx et
1958 seq.) ~~of this chapter~~ as to disposition by that successor.

1959 4. A successor to all special declarant rights held by his transferor who is not an affiliate
1960 of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a
1961 judgment or instrument conveying title to units under subsection ~~C hereof~~ D may declare his
1962 intention in a recorded instrument to hold those rights solely for transfer to another person.
1963 Thereafter, until transferring all special declarant rights to any person acquiring title to any unit
1964 owned by the successor, or until recording an instrument permitting exercise of all those rights,
1965 that successor may not exercise any of those rights other than any right reserved by his
1966 transferor pursuant to subsection A of § ~~55-79.74~~ 55.1-xxx. Any attempted exercise of those
1967 rights is void. So long as a successor declarant may not exercise special declarant rights under
1968 this subsection, he shall not be subject to any liability or obligation as a declarant other than
1969 liability for his acts and omissions relating to the exercise of rights reserved under subsection A
1970 of § ~~55-79.74~~ 55.1-xxx.

1971 F. G. Nothing in this section subjects any successor to a special declarant right to any
1972 claims against or other obligations of a transferor declarant, other than claims and obligations
1973 arising under this chapter or the condominium instruments.

1974 G. For the purposes of this section, "affiliate of a declarant" means any person who
1975 controls, is controlled by, or is under common control with a declarant. A person controls a
1976 declarant if the person (i) is general partner, officer, director or employer of the declarant, (ii)

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

Drafting note: The defined term "affiliate of a declarant" in existing subsection G is relocated to proposed subsection A. In proposed subdivisions D 1 and F 3, the term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning "or" in the sense of either or both/all. In proposed subsection F, the phrase "or persons" is stricken following the term "person" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. In proposed subdivision F 2, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Technical changes.

~~§ 55-79.74:4~~ § 55.1-xxx. Declarants not succeeding to special declarant rights.

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

Drafting note: No change.

§ ~~55-79.75~~ 55.1-xxx. Meetings of unit owners' ~~associations~~ association and executive ~~organ board~~.

A. 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of ~~said~~ the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

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

3. In lieu of delivering notice as specified in ~~the preceding paragraph of this subsection~~ subdivision 2, such officer or his agent may, to the extent that the condominium instruments or the condominium's rules adopted thereto and regulations expressly ~~so~~ provide, send notice by electronic ~~transmission means if~~ consented to by the unit owner to whom the notice is given, provided that the officer or his agent certifies in writing that notice was sent.

B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive ~~organ board~~ meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive ~~organ board~~, including any subcommittee or other committee ~~thereof of such association or board~~, shall be open to all unit owners of record. The executive ~~organ board~~ shall not use work sessions or other informal gatherings of the executive ~~organ board~~ to circumvent

the open meeting requirements of this section. The unit owners' association may, to the extent that the condominium instruments or adopted rules ~~adopted thereto~~ expressly ~~so~~ provide, send notice by electronic ~~transmission~~ means if consented to by the officer to whom the notice is given. Minutes of the meetings of the executive ~~organ~~ board shall be recorded and shall be available as provided in § ~~55-79.74:1~~ 55.1-xxx.

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

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

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the (i) executive ~~organ~~ board or any subcommittee or other committee ~~thereof of such board~~ or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

3. Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive ~~organ~~ board or subcommittee or other committee ~~thereof of the executive board~~ for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive ~~organ~~ board.

4. Any unit owner may record any portion of a meeting required to be open. The executive ~~organ~~ board or subcommittee or other committee ~~thereof of the executive board~~

conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

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

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

C. The executive ~~organ~~ board or any subcommittee or other committee ~~thereof of the~~ executive board may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation, and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant ~~thereto~~ to such condominium instruments for which a unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive ~~organ~~ board shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the executive ~~organ~~ board or subcommittee or other committee ~~thereof of the executive board~~, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section ~~shall do~~ not require the disclosure of information in violation of law.

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

Drafting note: Throughout the section, "electronic transmission" has been changed to "electronic means" for accuracy and consistency with the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). Throughout the section, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Subsections A and B are organized into subdivisions for clarity. In proposed subdivision B 1, the phrase "at which business of the unit owners' association is transacted or discussed" is added on the basis of the definition of "meeting," which is proposed to be deleted in proposed § 55.1-xxx [§ 55-79.41]. Technical changes are made.

~~§ 55-79.75:1~~ § 55.1-xxx. Distribution of information by members.

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

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

Drafting note: The term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].

~~§ 55-79.75:2~~ § 55.1-xxx. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no unit owners' association shall prohibit or otherwise adopt or enforce any

2111 policy restricting a unit owner from displaying upon property to which the unit owner has a
2112 separate ownership interest or a right to exclusive possession or use the flag of the United States
2113 whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, [\(4](#)
2114 [U.S.C. § 1 et seq.\)](#) or any rule or custom pertaining to the proper display of the flag. A unit
2115 owners' association may, however, establish reasonable restrictions as to the size, place,
2116 duration, and manner of placement or display of the flag on such property, provided [that](#) such
2117 restrictions are necessary to protect a substantial interest of the unit owners' association.

2118 B. The unit owners' association may restrict the display of such flags in the common
2119 elements.

2120 C. In any action brought by the unit owners' association under § ~~55-79.80:2~~ [55.1-xxx](#) for
2121 a violation of a flag restriction, the unit owners' association shall bear the burden of proof that
2122 the restrictions as to the size, place, duration, and manner of placement or display of such flag
2123 are necessary to protect a substantial interest of the unit owners' association.

2124 D. In any action brought by the unit owners' association under § ~~55-79.80:2~~ [55.1-xxx](#),
2125 the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of
2126 any limitation pertaining to the flag of the United States or any flagpole or similar structure
2127 necessary to display the flag of the United States was not contained in the public offering
2128 statement or resale certificate, as appropriate, required pursuant to § ~~55-79.90~~ [55.1-xxx](#) or ~~55-~~
2129 [79.97](#) [55.1-xxx](#) [\[contents of resale certificate; delivery\]](#).

2130 **Drafting note: Technical changes.**

2131 § ~~55-79.76~~ [55.1-xxx](#). Meetings of unit owners' associations and executive ~~organ~~ [board](#);
2132 quorums.

2133 A. Unless the condominium instruments otherwise provide or as specified in subsection
2134 G of § ~~55-79.77~~ [55.1-xxx](#), a quorum shall be deemed to be present throughout any meeting of
2135 the unit owners' association until adjourned if persons entitled to cast more than ~~33 1/3 percent~~
2136 [one-third](#) of the votes are present at the beginning of such meeting. The bylaws may provide for
2137 a larger percentage, or for a smaller percentage not less than 10 percent.

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

C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of the county or city ~~or county~~ in which the condominium or the greater part thereof of such condominium is located may order an annual meeting of the unit owners' association be held for the purpose of the election of members of the executive ~~organ~~ board, provided that:

1. No annual meeting as required by § ~~55-79.75~~ 55.1-xxx has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and

2. The unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years, which attempts have proven unsuccessful due to the failure to obtain a quorum.

The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

A unit owner filing a petition under this subsection shall provide a copy of the petition to the executive ~~organ~~ board at least ~~ten~~ 10 business days prior to filing.

Drafting note: The term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. A technical change is made.

§ ~~55-79.77~~ 55.1-xxx. Meetings of unit owners' associations and executive ~~organ~~ board; voting by unit owners; proxies.

A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A and B of § ~~55-79.58~~ 55.1-xxx a number of votes in the unit owners' association proportionate to the undivided interest in the common elements appertaining to each such unit.

B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted

shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

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

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

2192 be submitted by electronic ~~transmission~~ means, provided that any such electronic ~~transmission~~
2193 means shall either set forth or be submitted with information from which it can be determined
2194 that the electronic ~~transmission~~ means was authorized by the unit owner or the unit owner's
2195 proxy.

2196 E. If 50 percent or more of the votes in the unit owners' association appertain to 25
2197 percent or less of the units, then in any case where a majority vote is required by the
2198 condominium instruments or by this chapter, the requirement for such a majority shall be
2199 deemed to include, in addition to the specified majority of the votes, assent by the unit owners
2200 of a like majority of the units.

2201 F. All votes appertaining to units owned by the unit owners' association shall be deemed
2202 present for quorum purposes at all duly called meetings of the unit owners' association and shall
2203 be deemed cast in the same proportions as the votes cast by unit owners other than the unit
2204 owners' association.

2205 G. Except to the extent that the condominium instruments provide otherwise, the voting
2206 interest allocated to the unit or member that has been suspended by the unit owners' association
2207 or the executive ~~organ~~ board pursuant to the condominium instruments shall not be counted in
2208 the total number of voting interests used to determine the quorum for any meeting or vote under
2209 the condominium instruments.

2210 **Drafting note: In the catchline and in subsection G, the term "executive organ" is**
2211 **changed to "executive board" for consistency with the term as it is defined in proposed §**
2212 **55.1-xxx [§ 55-79.41]. In subsection C, the phrase "without limitation" is stricken after the**
2213 **term "include" on the basis of § 1-218, which states that throughout the Code "'Includes'**
2214 **means includes, but not limited to." In subsection C, the phrase "or persons" is stricken**
2215 **after the word "person" and in subsection D, the phrase "or proxies" is stricken after the**
2216 **word "proxy" on the basis of § 1-227, which states that throughout the Code any word**
2217 **used in the singular includes the plural. In subsection D, "electronic transmission" is**

changed to "electronic means" for accuracy and consistency with the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). Technical changes are made.

§ ~~55-79.78~~ 55.1-xxx. Officers.

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

B. If the condominium instruments provide that any officer~~or officers~~ must be a unit ~~owners~~ owner, then notwithstanding the provisions of ~~subsection (a)~~ subdivision 1 of § ~~55-79.50~~ 55.1-xxx, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include~~, without limitation,~~ any director, officer, partner in, or trustee of any person~~which that~~ is, either alone or in conjunction with another person~~or persons~~, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection A were it a natural person holding such office.

Drafting note: In subsections A and B, the phrase "or officers" is stricken after the word "officer"; in subsection A, the phrase "or dispositions" is stricken after the word "disposition"; and in subsection B, the phrase "or persons" is stricken after the word "person" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. In subsection B, the phrase "without limitation" is stricken after the term "include" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made.

§ ~~55-79.79~~ 55.1-xxx. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee.

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

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for two years from the date each is conveyed, and all of the common elements for two years. ~~In the case of~~ For each unit, the declarant shall also warrant that the unit is fit for habitation in the case of a residential unit and constructed in a workmanlike manner so as to pass without objection in the trade. The ~~two years referred to in this subsection shall begin two-year warranty~~ as to each of the common elements begins whenever ~~the same has that common element has~~ been completed or, if later, (i) as to any common element within any additional land or portion ~~thereof of the additional land~~, at the time the first unit ~~therein in that additional land~~ is conveyed; (ii) as to any common element within any convertible land or portion ~~thereof of the convertible land~~, at the time the first unit ~~therein in the convertible land~~ is conveyed; and (iii) as to any common element within any other portion

of the condominium, at the time the first unit ~~therein~~ in that portion is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element ~~which that~~ reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and ~~which that~~ require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall ~~be commenced~~ begin within (i) five years after the date such warranty period began or (ii) one year after the formation of any warranty review committee pursuant to subsection B of § ~~55-79.74~~ 55.1-xxx, whichever occurs last ~~occurs~~. However, no such action shall be maintained against the declarant unless a written statement by the claimant, or his agent, attorney, or representative, of the nature of the alleged defect has been sent to the declarant, by registered or certified mail, at his last known address, as reflected in the records of the Common Interest Community Board, more than six months prior to the ~~commencement~~ beginning of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, not to exceed five months. Sending the notice required by this subsection shall toll the statute of limitations for ~~commencing~~ beginning a breach of warranty action for a period not to exceed six months.

D. If the initial period of declarant control has been extended in accordance with subsection B of § ~~55-79.74~~ 55.1-xxx, the warranty review committee ~~(, referred to in this section as "the committee.")~~ shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional

2298 assessment against all of the units in proportion to their respective undivided interests in the
2299 common elements pursuant to § ~~55-79.83~~ 55.1-xxx if the committee determines that the
2300 assessments levied by the unit owners' association are insufficient to enable the committee
2301 reasonably to perform its functions pursuant to this subsection. The committee or the declarant
2302 shall notify the governing body of the ~~county, city, or town~~ locality in which the condominium
2303 is located of the formation of the committee, within 30 days of its formation. Within 30 days
2304 after such notice, the local governing body or an agency designated by the local governing body
2305 shall advise the chair of the committee of any outstanding violations of applicable building
2306 codes, local ordinances, or other deficiencies of record. Members of the committee shall be
2307 insured, indemnified, and subject to liability to the same extent as officers or directors under the
2308 condominium instruments or applicable law. The unit owners' association shall provide
2309 sufficient funds reasonably necessary for the committee to perform the functions set out in this
2310 subsection and to:

2311 1. Engage an independent architect, engineer, legal counsel, and such other experts as
2312 the committee may reasonably determine;

2313 2. Investigate whether there exists any breach of the warranty as to any of the common
2314 elements. The committee shall document its findings and the evidence that supports such
2315 findings. Such findings and evidence shall be confidential and shall not be disclosed to the
2316 declarant without the consent of the committee; and

2317 3. Assert or settle in the name of the unit owners' association any claims involving the
2318 declarant's warranty on the common elements, provided that (i) the committee sends the
2319 declarant at least six months prior to the expiration of the statute of limitations a written
2320 statement pursuant to subsection C of the alleged nature of any defect in the common elements
2321 giving the declarant an opportunity to cure the alleged defect;; (ii) the declarant fails to cure the
2322 alleged defect within a reasonable time;; and (iii) the declarant control period or the statute of
2323 limitations has not expired.

E. Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or ~~as-build~~ as-built plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

Drafting note: In subsection B, the phrase "in the case of a residential unit" is added to clarify that a warranty of habitability is only required for residential and not commercial units. In subsection D, the phrase "city, county, or town" is replaced with the term "locality" on the basis of § 1-221, which states that throughout the Code "'Locality' means a county, city, or town as the context may require." Technical changes are made.

~~§ 55-79.80~~ § 55.1-xxx. Control of common elements.

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

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the ~~said~~ association arising under ~~§ 55-79.79~~ § 55.1-xxx.

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

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

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

2351 B. Except to the extent prohibited, restricted, or limited by the condominium
2352 instruments, ~~and subject to any restrictions and limitations specified therein~~, the executive ~~organ~~
2353 board of the unit owners' association, if any, and if not, then the unit owners' association itself,
2354 ~~shall have~~ has the irrevocable power as attorney-in-fact on behalf of all the unit owners and their
2355 successors in title with respect to the common elements, including ~~without limitation~~ the right,
2356 in the name of the unit owners' association, to (i) ~~to~~ grant easements through the common
2357 elements and accept easements benefiting all or any portion of the condominium ~~or any portion~~
2358 ~~thereof;~~ (ii) ~~to~~ assert, through litigation or otherwise, defend against, compromise, adjust, and
2359 settle any claims or actions related to common elements, other than claims against or actions
2360 involving the declarant during any period of declarant control reserved pursuant to subsection A
2361 of § ~~55-79.74~~, 55.1-xxx; and (iii) ~~to~~ apply for any governmental approvals under state and local
2362 law.

2363 C. This section shall not be construed to prohibit the grant, by the condominium
2364 instruments, of other powers and responsibilities to the unit owners' association or its executive
2365 ~~organ~~ board.

2366 **Drafting note: In subsections A and B, the first sentence is re-worded for clarity. In**
2367 **subdivision A 4, the phrase "but not limited to" is stricken following the term "including"**
2368 **and in subsection B, the phrase "without limitation" is stricken following the term**
2369 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**
2370 **means includes, but not limited to." In subsections B and C, the term "executive organ" is**
2371 **changed to "executive board" for consistency with the term as it is defined in proposed §**
2372 **55.1-xxx [§ 55-79.41]. Technical changes are made.**

2373 § ~~55-79.80:04~~ 55.1-xxx. Common elements; notice of pesticide application.

2374 ~~Unit—The unit~~ owners' ~~associations~~ association shall post notice of all pesticide
2375 applications in or upon the common elements. Such notice shall consist of conspicuous signs
2376 placed in or upon the common elements where the pesticide will be applied at least ~~forty-eight~~
2377 48 hours prior to the application.

2378 **Drafting note: Technical changes.**

2379 § ~~55-79.80-1~~ 55.1-xxx. Tort and contract liability; judgment lien.

2380 A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant
2381 or of the unit owners' association; or (ii) in connection with the condition of any portion of the
2382 condominium ~~which~~ that the declarant or the association has the responsibility to maintain; shall
2383 be brought against the declarant or the association, as ~~the case may be~~ appropriate. No unit
2384 owner shall be precluded from bringing such an action by virtue of his ownership of an
2385 undivided interest in the common elements or by reason of his membership in the association or
2386 his status as an officer.

2387 B. Unit owners other than the declarant shall not be liable for torts caused by agents or
2388 employees of the declarant within any convertible land or using any easement reserved in the
2389 declaration or created by § ~~55-79.65~~ 55.1-xxx or ~~§ 55-79.66~~ 55.1-xxx.

2390 C. An action arising from a contract made by or on behalf of the unit owners'
2391 association; or its executive ~~organ~~ board or the unit owners as a group; shall be brought against
2392 the association, or against the declarant if the cause of action arose during the exercise by the
2393 declarant of control reserved pursuant to subsection A of § ~~55-79.74~~ 55.1-xxx. No unit owner
2394 shall be precluded from bringing such an action by reason of his membership in the association
2395 or his status as an officer.

2396 D. A judgment for money against the unit owners' association shall be a lien against any
2397 property owned by the association, and against each of the condominium units in proportion to
2398 the liability of each unit owner for common expenses as established pursuant to subsection D of
2399 § ~~55-79.83~~ 55.1-xxx, but not against any other property of any unit owner. A unit owner who
2400 pays a percentage of the total amount due under such judgment equal to such unit owner's
2401 liability for common expenses fixed pursuant to subsection D of § ~~55-79.83~~ 55.1-xxx shall be
2402 entitled to a release of any such judgment lien, and the association shall not be entitled to assess
2403 the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to
2404 the provisions of § 8.01-458.

Drafting note: In subsection C, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].

Technical changes are made.

§ ~~55-79.80:2~~ 55.1-xxx. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules and regulations.

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

B. Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § ~~55-79.75~~ 55.1-xxx. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive ~~organ~~ board or such other tribunal as the condominium instruments or its adopted rules ~~duly adopted pursuant thereto and regulations~~ specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance ~~thereof~~, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § ~~55-79.75~~ 55.1-xxx.

2432 Within seven days of the hearing, the hearing result shall be hand delivered or mailed by
2433 registered or certified mail, return receipt requested, to such unit owner at the address required
2434 for notices of meetings pursuant to § ~~55-79.75~~ 55.1-xxx.

2435 C. The amount of any charges ~~so~~ assessed shall not exceed \$50 for a single offense, or
2436 \$10 per diem for any offense of a continuing nature, and shall be treated as an assessment
2437 against such unit owner's condominium unit for the purpose of § ~~55-79.84~~ 55.1-xxx. However,
2438 the total charges for any offense of a continuing nature shall not be assessed for a period
2439 exceeding 90 days.

2440 D. The unit owners' association may file or defend legal action in general district or
2441 circuit court that seeks relief, including injunctive relief, arising from any violation of the
2442 condominium instruments or ~~duly~~ the condominium's adopted rules and regulations.

2443 E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit
2444 owners' association, by and through its counsel, to collect the charges or obtain injunctive relief
2445 and correct the violation or (ii) the unit owner challenging any such charges, no additional
2446 charges shall accrue.

2447 If the court rules in favor of the unit owners' association, it shall be entitled to collect
2448 such charges from the date the action was filed as well as all other charges assessed pursuant to
2449 this section against the unit owner prior to the action. In addition, if the court finds that the
2450 violation remains uncorrected, the court may order the unit owner to abate or remedy the
2451 violation.

2452 In any suit filed in general district court pursuant to this section, the court may enter
2453 default judgment against the unit owner on the ~~unit owners' association's~~ sworn affidavit of the
2454 unit owners' association.

2455 F. This section shall not be construed to prohibit the grant, by the condominium
2456 instruments, of other powers and responsibilities to the unit owners' association or its executive
2457 ~~organ~~ board.

Drafting note: In the catchline and in subsections A and B, the phrase "and regulations" is inserted following the word "rules" for consistency with the existing language in subsection D. In subsections B and F, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Technical changes are made.

~~§ 55-79.80:3 55.1-xxx. Power of unit owners' association to limit~~ Limitation of occupancy of a unit.

~~The unit owners' association shall have the power, to~~ To the extent expressly provided in the condominium instruments ~~expressly so provide, to~~ the unit owners' association may limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of ~~§ 55-79.52~~ applicable law, including the Virginia Fair Housing Law (§ 36-96.1 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and local ordinances.

Drafting note: The catchline is reworded to reflect language changes in the section, and the section is restructured for clarity. The cross-reference to existing § 55-79.52 is stricken because it contains a further cross-reference to the Virginia Fair Housing Law; instead, specific cross-references to the Virginia Fair Housing Law and Uniform Statewide Building Code are added. In addition, a reference to local ordinances, which may contain additional occupancy restrictions, is added for clarification.

§ 55.1-xxx. Use of for sale sign in connection with resale.

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

~~1. Require~~ require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership

interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Virginia Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed;~~or~~.

Drafting note: The language in this section is logically relocated from existing subdivision K 1 of § 55-79.97 because it deals with limitations placed upon unit associations regarding their ability to mandate the placement and use of for sale signs connected with the resale of a unit by a unit owner. Technical changes are made.

§ 55.1-xxx. Designation of authorized representative.
~~2. Require~~ Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of ~~§ 55-79.77~~ § 55.1-xxx and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

Drafting note: The language in this section is logically relocated from existing subdivision K 2 of § 55.1-xxx [§ 55-79.97] because it deals with limitations placed upon unit associations regarding their ability to interfere with a unit owner's designation of an authorized representative. Technical changes are made.

~~§ 55-79.81~~ § 55.1-xxx. Insurance.

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

2512 1. A master casualty policy affording fire and extended coverage in an amount
2513 consonant with the full replacement value of the structures within the condominium, or of such
2514 structures that in whole or in part comprise portions of the common elements.

2515 2. A master liability policy, in an amount specified by the condominium instruments,
2516 covering the unit owners' association, the executive ~~organ~~ board, if any, the managing agent, if
2517 any, all persons acting or who may come to act as agents or employees of any of the foregoing
2518 with respect to the condominium, and all unit owners and other persons entitled to occupy any
2519 unit or other portion of the condominium.

2520 3. Such other policies as may be required by the condominium instruments, including,
2521 ~~without limitation,~~ workers' compensation insurance, liability insurance on motor vehicles
2522 owned by the unit owners' association, and specialized policies covering lands or improvements
2523 in which the unit owners' association has or shares ownership or other rights.

2524 B. Any unit owners' association collecting assessments for common expenses shall
2525 obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring
2526 the unit owners' association against losses resulting from theft or dishonesty committed by the
2527 officers, directors, or persons employed by the unit owners' association, or committed by any
2528 common interest community manager or employees of the common interest community
2529 manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser
2530 of \$1 million or the amount of reserve balances of the unit owners' association plus one-fourth
2531 of the aggregate annual assessment of such unit owners' association. The minimum coverage
2532 amount shall be \$10,000. The executive ~~organ~~ board or common interest community manager
2533 may obtain such bond or insurance on behalf of the unit owners' association.

2534 C. When any policy of insurance has been obtained by or on behalf of the unit owners'
2535 association, written notice of ~~the such~~ the ~~obtainment thereof~~ obtainment and of any subsequent changes ~~therein~~
2536 in or termination ~~thereof of the policy~~ shall be promptly furnished to each unit owner by the
2537 officer required to send notices of meetings of the unit owners' association. Such notices shall be
2538 sent in accordance with the provisions of subsection A of § ~~55-79.75~~ 55.1-xxx.

2539 **Drafting note: In subsections A and B, the term "executive organ" is changed to**
2540 **"executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§**
2541 **55-79.41]. In subdivision A 3, the phrase "without limitation" is stricken following the**
2542 **word "including" on the basis of § 1-218, which states that throughout the Code**
2543 **"'Includes' means includes, but not limited to." Technical changes are made.**

2544 ~~§ 55-79.82. Repealed.~~

2545 **Drafting note: Repealed by Acts 1991, c. 497.**

2546 ~~§ 55-79.83~~ 55.1-xxx. Liability for common expenses; late fees.

2547 A. Except to the extent that the condominium instruments provide otherwise, any
2548 common expenses associated with the maintenance, repair, renovation, restoration, or
2549 replacement of any limited common element shall be specially assessed against the
2550 condominium unit to which that limited common element was assigned at the time such
2551 expenses were made or incurred. If the limited common element involved was assigned at that
2552 time to more than one condominium unit, however, such expenses shall be specially assessed
2553 against each such condominium unit equally so that the total of such special assessments equals
2554 the total of such expenses, except to the extent that the condominium instruments provide
2555 otherwise.

2556 B. To the extent that the condominium instruments expressly so provide, any other
2557 common expenses benefiting less than all of the condominium units, or caused by the conduct
2558 of less than all those entitled to occupy the same or by their licensees or invitees, shall be
2559 specially assessed against ~~the~~ any condominium unit ~~or units~~ involved, in accordance with such
2560 reasonable provisions as the condominium instruments may make for such cases. The executive
2561 ~~organ~~ board may impose reasonable user fees.

2562 C. To the extent that the condominium instruments expressly so provide, (i) any
2563 common expenses paid or incurred in making available the same off-site amenities or paid
2564 subscription television service to some or all of the unit owners shall be assessed equally against
2565 the condominium units involved and (ii) any common expenses paid or incurred in providing

metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C ~~hereof~~ shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § ~~55-79.77~~ 55.1-xxx, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

E. Except to the extent otherwise provided in the condominium instruments, if the executive ~~organ~~ board determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive ~~organ~~ shall have the authority to board may levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive ~~organ~~ board shall give written notice ~~of any additional assessment~~ to the unit owners stating the amount of, the reasons ~~therefor for~~, and the due date for payment of ~~such~~ any additional assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

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

2593 director or officer to perform his fiduciary duty is rescinded by the unit owners' association in
2594 accordance with this subsection. The unit owners' association shall indemnify such director or
2595 officer against any damage resulting from any claimed breach of fiduciary duty ~~arising~~
2596 ~~therefrom~~ due to the assessment for the necessary funds rescinded by the unit owners'
2597 association in accordance with this subsection.

2598 F. ~~It remains the policy of this section that neither~~ Neither a unit owned by the declarant
2599 nor any other unit may be exempted from assessments made pursuant to this section by reason
2600 of the identity of the unit owner ~~thereof~~.

2601 G. All condominium instruments for condominiums created prior to January 1, 1981, are
2602 hereby validated notwithstanding noncompliance with the first sentence of subsection D ~~hereof~~,
2603 if they provide instead that the amount of all common expenses not specially assessed pursuant
2604 to subsection A, B, or C ~~hereof~~ shall be assessed against the condominium units in proportion to
2605 their respective undivided interests in the common elements.

2606 H. Except to the extent that the condominium instruments or the association's rules or
2607 regulations ~~promulgated pursuant thereto~~ provide otherwise, an executive ~~organ~~ board may
2608 impose a late fee, not to exceed the penalty provided for in § 58.1-3915, for any assessment or
2609 installment ~~thereof~~ that is not paid within 60 days of the due date for payment of such
2610 assessment or installment.

2611 **Drafting note: In subsection B, the phrase "or units" is stricken after the term**
2612 **"unit" on the basis of § 1-227, which states that throughout the Code any word used in the**
2613 **singular includes the plural. In subsections B, E, and H, the term "executive organ" is**
2614 **changed to "executive board" for consistency with the term as it is defined in proposed §**
2615 **55.1-xxx [§ 55-79.41]. Technical changes are made.**

2616 ~~§ 55-79.83-1~~ 55.1-xxx. Reserves for capital components.

2617 A. Except to the extent otherwise provided in the condominium instruments and unless
2618 the condominium instruments impose more stringent requirements, the executive ~~organ~~ board
2619 shall:

2620 1. Conduct a study at least once every five years ~~a study~~ to determine the necessity and
2621 amount of reserves required to repair, replace, and restore the capital components;

2622 2. Review the results of that study at least annually to determine if reserves are
2623 sufficient; and

2624 3. Make any adjustments the executive ~~organ~~ board deems necessary to maintain
2625 reserves, as appropriate.

2626 B. To the extent that the reserve study conducted in accordance with this section
2627 indicates a need to budget for reserves, the unit owners' association budget shall include,
2628 without limitations:

2629 1. The current estimated replacement cost, estimated remaining life, and estimated useful
2630 life of the capital components;

2631 2. As of the beginning of the fiscal year for which the budget is prepared, the current
2632 amount of accumulated cash reserves set aside, to repair, replace, or restore the capital
2633 components and the amount of the expected contribution to the reserve fund for that fiscal year;
2634 and

2635 3. A general statement describing the procedures used for the estimation and
2636 accumulation of cash reserves pursuant to this section and the extent to which the unit owners'
2637 association is funding its reserve obligations consistent with the study currently in effect.

2638 **Drafting note: In subsection A, the term "executive organ" is changed to "executive**
2639 **board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. In**
2640 **subsection B, the phrase "without limitations" is stricken following the term "include" on**
2641 **the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but**
2642 **not limited to." Technical changes are made.**

2643 ~~§ 55-79.84~~ 55.1-xxx. Lien for assessments.

2644 A. The unit owners' association shall have a lien on ~~every~~ each condominium unit for
2645 unpaid assessments levied against that condominium unit in accordance with the provisions of
2646 this chapter and all lawful provisions of the condominium instruments. The ~~said~~ lien, once

perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of ~~said~~ such lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

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

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

1. A description of the condominium unit in accordance with the provisions of ~~§ 55-~~ 79.47 55.1-xxx.
2. The name or names of the persons constituting the unit owners of that condominium unit.
3. The amount of unpaid assessments currently due or past due together with the date when each fell due.
4. The date of issuance of the memorandum.

2674 ~~It shall be the duty of the~~ The clerk in whose office such memorandum is filed ~~as~~
2675 ~~hereinabove provided to~~ shall record and index the ~~same~~ memorandum as provided in
2676 subsection B, in the names of the persons identified ~~therein~~ in such memorandum as well as in
2677 the name of the unit owners' association. The cost of recording such memorandum shall be
2678 taxed against the person found liable in any judgment or decree enforcing such lien.

2679 D. No suit to enforce any lien perfected under subsection C shall be brought or action to
2680 foreclose any lien perfected under subsection I shall be initiated after 36 months from the time
2681 when the memorandum of lien was recorded; however, the filing of a petition to enforce any
2682 such lien in any suit ~~wherein~~ in which such petition may be properly filed shall be regarded as
2683 the institution of a suit under this section. Nothing ~~herein~~ in this subsection shall extend the time
2684 within which any such lien may be perfected.

2685 E. The judgment or decree in an action brought pursuant to this section shall include;
2686 ~~without limitation,~~ reimbursement for costs and ~~attorneys'~~ attorney fees of the prevailing party.
2687 If the association prevails, it may also recover interest at the legal rate for the sums secured by
2688 the lien from the time each such sum became due and payable.

2689 F. When payment or satisfaction is made of a debt secured by the lien perfected by
2690 subsection C, ~~said~~ such lien shall be released in accordance with the provisions of § ~~55-66.3~~
2691 55.1-xxx. Any lien ~~which~~ that is not so released shall subject the lien creditor to the penalty set
2692 forth in subdivision A 1 of § ~~55-66.3~~ 55.1-xxx. For the purposes of that section, the principal
2693 officer of the unit owners' association, or such other officer ~~or officers~~ as the condominium
2694 instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

2695 G. Nothing in this section shall be construed to prohibit actions at law to recover sums
2696 for which subsection A creates a lien, maintainable pursuant to § ~~55-79.53~~ 55.1-xxx.

2697 H. Any unit owner or purchaser of a condominium unit, having executed a contract for
2698 the disposition of ~~the same~~ such condominium unit, shall be entitled upon request to a
2699 recordable statement setting forth the amount of unpaid assessments currently levied against that
2700 unit. Such request shall be in writing, directed to the principal officer of the unit owners'

association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive ~~organ~~ board, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

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

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

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

2727 The unit owners' association, at its option, may from time to time remove the trustee and appoint
2728 a successor trustee.

2729 3. If the unit owner meets the conditions specified in this subdivision prior to the date of
2730 the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien
2731 discontinued prior to the sale of the unit. Those conditions are that the unit owner: (a) satisfy the
2732 debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all
2733 expenses and costs incurred in perfecting and enforcing the lien, including ~~but not limited to~~
2734 advertising costs and reasonable ~~attorneys'~~ attorney fees.

2735 4. In addition to the advertisement required by subdivision 5, the unit owners'
2736 association shall give written notice of the time, date, and place of any proposed sale in
2737 execution of the lien, and ~~including~~ shall include the name, address, and telephone number of
2738 the trustee, by personal delivery or by mail to (i) the present owner of the ~~property~~
2739 condominium unit to be sold at his last known address as such owner and address appear in the
2740 records of the unit owners' association, (ii) any lienholder who holds a note against the ~~property~~
2741 condominium unit secured by a deed of trust recorded at least 30 days prior to the proposed sale
2742 and whose address is recorded with the deed of trust, and (iii) any assignee of such a note
2743 secured by a deed of trust provided the assignment and address of the assignee are likewise
2744 recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the
2745 notice containing the same information to the owner by certified or registered mail no less than
2746 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the
2747 memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a
2748 sufficient compliance with the requirement of notice.

2749 5. The advertisement of sale by the unit owners' association shall be in a newspaper
2750 having a general circulation in the ~~city or county wherein~~ locality in which the ~~property~~
2751 condominium unit to be sold, or any portion ~~thereof of such unit,~~ lies is located pursuant to the
2752 following provisions:

2753 a. The unit owners' association shall advertise once a week for four successive weeks;
2754 however, if the ~~property condominium unit~~ or some portion ~~thereof of such unit~~ is located in a
2755 city or in a county immediately contiguous to a city, publication of the advertisement five
2756 different days, which may be consecutive days, shall be deemed adequate. The sale shall be held
2757 on any day following the day of the last advertisement that is no earlier than eight days
2758 following the first advertisement nor more than 30 days following the last advertisement.

2759 b. Such advertisement shall be placed in that section of the newspaper where legal
2760 notices appear or where the type of property being sold is generally advertised for sale. The
2761 advertisement of sale, in addition to such other matters as the unit owners' association finds
2762 appropriate, shall set forth a description of the ~~property condominium unit~~ to be sold, which
2763 description need not be as extensive as that contained in the deed of trust, but shall identify the
2764 ~~property condominium unit~~ by street address, if any, or, if none, shall give the general location
2765 of the ~~property condominium unit~~ with reference to streets, routes, or known landmarks. Where
2766 available, tax map identification may be used but is not required. The advertisement shall also
2767 include the date, time, place, and terms of sale and the name of the unit owners' association. ~~It~~
2768 The advertisement shall set forth the name, address, and telephone number of the representative,
2769 agent, or attorney who may be able to respond to inquiries concerning the sale.

2770 c. In addition to the advertisement required by subdivisions a and b ~~above~~, the unit
2771 owners' association may give such other further and different advertisement as the association
2772 finds appropriate.

2773 6. In the event of postponement of a sale, which postponement shall be at the discretion
2774 of the unit owners' association, advertisement of such postponed sale shall be in the same
2775 manner as the original advertisement of sale.

2776 7. Failure to comply with the requirements for advertisement contained in this section
2777 shall, upon petition, render a sale of the ~~property condominium unit~~ voidable by the court.

2778 8. In the event of a sale, the unit owners' association shall have the following powers and
2779 duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell, or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 of this ~~section~~ subsection and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association, or its agent or attorney.

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

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

2807 9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with
2808 special warranty of title. The trustee shall not be required to take possession of the ~~property~~
2809 condominium unit prior to the sale ~~thereof~~ or to deliver possession of the unit to the purchaser at
2810 the sale.

2811 10. The trustee shall file an accounting of the sale with the commissioner of accounts
2812 pursuant to § 64.2-1309 and every account of a sale shall be recorded pursuant to § 64.2-1310.
2813 In addition, the accounting shall be made available for inspection and copying pursuant to § ~~55-~~
2814 ~~79.74:1~~ 55.1-xxx upon the written request of the prior unit owner, current unit owner, or any
2815 holder of a recorded lien against the unit at the time of the sale. The unit owners' association
2816 shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

2817 11. If the sale of a unit is made pursuant to this subsection ~~I~~ and the accounting is made
2818 by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12
2819 months from the confirmation of the accounting by the commissioner of accounts, the sale is set
2820 aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is
2821 ~~therein~~ entered requiring such sale to be set aside.

2822 **Drafting note: For consistency throughout the section, the word "property" is**
2823 **replaced with "condominium unit" or "unit," as appropriate. In subsections C and F, the**
2824 **phrase "or officers" is stricken following the term "officer" on the basis of § 1-227, which**
2825 **states that throughout the Code any word used in the singular includes the plural. In**
2826 **subsection C, language is re-organized for clarity. In subsection E, the phrase "without**
2827 **limitation" is stricken following the word "include," and in subdivision I 3, the phrase**
2828 **"but not limited to" is stricken after the word "including" on the basis of § 1-218, which**
2829 **states that throughout the Code "'Includes' means includes, but not limited to." In**
2830 **subsection H, the term "executive organ" is changed to "executive board" for consistency**
2831 **with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. In subdivision I 5, the**
2832 **phrase "county or city" is replaced with the word "locality" on the basis of § 1-221, which**

states that throughout the Code "'Locality' means a county, city, or town as the context may require." Technical changes are made.

§ ~~55-79.84:01~~ 55.1-xxx. Notice of sale under deed of trust.

In accordance with the provisions of § 15.2-979, the unit owners' association shall be given notice whenever a condominium unit becomes subject to a sale under a deed of trust. Upon receipt of such notice, the executive ~~organ~~ board, on behalf of the unit owners' association, shall exercise whatever due diligence it deems necessary with respect to the unit subject to a sale under a deed of trust to protect the interests of the unit owners' association.

Drafting note: The term "executive organ" is changed to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].

§ ~~55-79.84:1~~ 55.1-xxx. Bond to be posted by declarant.

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

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

2859 | The Board may promulgate reasonable regulations~~which~~ that govern the return of bonds
2860 submitted in accordance with this section.

2861 Drafting note: Technical changes.

2862 | ~~§ 55-79.85~~ § 55.1-xxx. Restraints on alienation.

2863 If the condominium instruments create any rights of first refusal or other restraints on
2864 free alienability of the condominium units, such rights and restraints ~~shall be~~ are void unless the
2865 condominium instruments make provision for promptly furnishing to any unit owner or
2866 purchaser requesting ~~the same~~ such rights and restraints a recordable statement certifying to any
2867 waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such
2868 waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a
2869 statement in such circumstances in accordance with the provisions of the condominium
2870 instruments ~~shall~~ make all such rights and restraints inapplicable to any disposition of a
2871 condominium unit in contemplation of which such statement was requested. Any such statement
2872 shall be binding on the unit owners' association ~~of unit owners~~, the executive ~~organ~~ board, and
2873 every unit owner. Payment of a fee not exceeding ~~twenty-five dollars~~ \$25 may be required as a
2874 prerequisite to the issuance of such a statement if the condominium instruments so provide.

2875 **Drafting note: The term "executive organ" is changed to "executive board" for**
2876 **consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Technical**
2877 **changes are made.**

2878 Article 4.

2879 Administration of Chapter; Sale, ~~etc.~~ Etc., of Condominium Units.

2880 Drafting note: Existing Article 4, containing provisions related to the
2881 administration of the Virginia Condominium Act and sale of condominium units, is
2882 retained as proposed Article 4. Existing § 55-79.98 is relocated to the beginning of Article 4
2883 so that the powers and duties of the Common Interest Community Board are logically
2884 placed near proposed § 55.1-xxx [§ 55-79.86], which states that the Common Interest
2885 Community Board is the administrative agency for this chapter. Existing §§ 55-79.97

through 55-79.97:3 are relocated to proposed Article 5 for consistency with the organization of the Property Owners' Association Act (§ 55.1-xxx et seq.), which has a stand-alone article for resale disclosure provisions.

~~§ 55-79.86 55.1-xxx. Administrative agency Common Interest Community Board.~~

This chapter shall be administered by the Common Interest Community Board ~~which hereinafter is called the agency.~~

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

~~§ 55-79.98 55.1-xxx.~~ General powers and duties of the Common Interest Community Board.

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

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

C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or ~~a rule~~ Common Interest Community Board regulation or order ~~hereunder~~, the ~~agency~~ Common Interest Community Board, with or without prior administrative proceedings, may bring an action in the circuit court of the county or city ~~or county~~ in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any ~~rule~~ Common Interest Community

2913 Board regulation or order ~~hereunder~~. Upon proper showing, injunctive relief ~~of or~~ temporary
2914 restraining orders shall be granted. The ~~agency~~ Common Interest Community Board is not
2915 required to post a bond in any court proceedings or prove that ~~any no~~ other adequate remedy at
2916 law exists.

2917 D. With respect to any lawful process served upon the ~~agency~~ Common Interest
2918 Community Board pursuant to the appointment made in accordance with subdivision A 1 of §
2919 ~~55-79.89~~ 55.1-xxx, the ~~agency~~ Common Interest Community Board shall forthwith cause the
2920 same to be sent by registered or certified mail to any of the principals, officers, directors,
2921 partners, or trustees of the declarant listed in the application for registration at the last address
2922 listed in such application or ~~any the most recent~~ annual report.

2923 E. The ~~agency~~ Common Interest Community Board may intervene in any suit involving
2924 the declarant. In any suit by or against a declarant involving a condominium, the declarant shall
2925 promptly furnish the ~~agency~~ Common Interest Community Board notice of the suit and copies
2926 of all pleadings.

2927 F. The ~~agency~~ Common Interest Community Board may:
2928 1. Accept registrations filed in other states or with the federal government;
2929 2. Contract with similar agencies in ~~this the~~ Commonwealth or other jurisdictions to
2930 perform investigative functions; and
2931 3. Accept grants in aid from any governmental source.

2932 G. The ~~agency~~ Common Interest Community Board shall cooperate with similar
2933 agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public
2934 offering statements, advertising standards, ~~rules regulations~~, and common administrative
2935 practices.

2936 **Drafting note: Throughout the section, the term "agency" is replaced with**
2937 **"Common Interest Community Board;" the Common Interest Community Board falls**
2938 **under the purview of the Department of Professional and Occupational Regulation, a state**
2939 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**

subsection A, the phrase "but not be limited to" is stricken following the word "include" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsections A, B, C, and G, the word "rule" or "rules" is stricken prior to the word "regulation" or "regulations" because an administrative agency promulgates regulations, not rules. In subsection D, the word "any" prior to the phrase "annual report" is replaced with "the most recent" because that report is most likely to contain an accurate address for notification. Technical changes are made.

§ ~~55-79.87~~ 55.1-xxx. Exemptions from certain provisions of article.

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ ~~55-79.88~~ 55.1-xxx through ~~55-79.93~~ 55.1-xxx, subsections ~~A, B~~ and ~~C, D~~ of § ~~55-79.94~~ 55.1-xxx, and ~~§ 55-79.97~~ §§ 55.1-xxx [resale by purchaser; contract disclosure; right of cancellation] and 55.1-xxx [contents of resale certificate; delivery] do not apply to:

1. Dispositions pursuant to court order;
2. Dispositions by any government or government agency;
3. Offers by the declarant on nonbinding reservation agreements;
4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or
5. A disposition of a unit by a sale at an auction, where a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ ~~55-79.88~~ 55.1-xxx through ~~55-79.95~~ 55.1-xxx shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

Drafting note: Technical changes.

2967 § ~~55-79.87:1~~ 55.1-xxx. Rental of units.

2968 A. Except as expressly authorized in this chapter or in the condominium instruments or
2969 as otherwise provided by law, no unit owners' association shall:

2970 1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an
2971 assessment or impose a charge except as provided in § ~~55-79.42:1~~ 55.1-xxx;

2972 2. Charge a rental fee, application fee, or other processing fee of any kind in excess of
2973 \$50 during the term of any lease;

2974 3. Charge an annual or monthly rental fee or any other fee not expressly authorized in §
2975 ~~55-79.42:1~~ 55.1-xxx;

2976 4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit
2977 owners' association;

2978 5. Charge any deposit from the unit owner or the tenant of the unit owner; or

2979 6. Have the authority to evict a tenant of any unit owner or to require any unit owner to
2980 execute a power of attorney authorizing the unit owners' association to so evict. However, if the
2981 unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit
2982 owner's authorized representative with respect to any lease, the unit owners' association shall
2983 recognize such representation without a formal power of attorney, provided that the unit owners'
2984 association is given a written authorization signed by the unit owner designating such
2985 representative. Notwithstanding ~~the foregoing any other provision of this subdivision~~, the
2986 requirements of § ~~55-79.77~~ 55.1-xxx and the condominium instruments shall be satisfied before
2987 any such representative may exercise a vote on behalf of a unit owner as a proxy.

2988 B. The unit owners' association may require the unit owner to provide the unit owners'
2989 association with the names and contact information of the tenants and authorized occupants
2990 under such lease and of any authorized agent of the unit owner; and vehicle information for such
2991 tenants or authorized occupants. The unit owners' association may require the unit owner to
2992 provide the unit owners' association with the tenant's ~~acknowledgement~~ acknowledgment of and
2993 consent to any rules and regulations of the unit owners' association.

2994 C. The provisions of this section shall not apply to units owned by the unit owners'
2995 association.

2996 **Drafting note: Technical changes.**

2997 § ~~55-79.88~~ 55.1-xxx. Limitations on dispositions of units.

2998 Unless exempt by § ~~55-79.87~~ 55.1-xxx:

2999 1. No declarant may offer or dispose of any interest in a condominium unit located in
3000 ~~this the~~ Commonwealth, nor offer or dispose of in ~~this the~~ Commonwealth ~~of~~ any interest in a
3001 condominium unit located ~~without this outside of the~~ Commonwealth prior to the time the
3002 condominium including such unit is registered in accordance with this chapter.

3003 2. No declarant may dispose of any interest in a condominium unit unless he delivers to
3004 the purchaser a current public offering statement by the time of such disposition and such
3005 disposition is expressly and without qualification or condition subject to cancellation by the
3006 purchaser within five calendar days from the contract date of the disposition or delivery of the
3007 current public offering statement, whichever is later. If the purchaser elects to cancel, he may do
3008 so by notice ~~thereof of such cancellation~~ hand-delivered or sent by United States mail, return
3009 receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit
3010 made by the purchaser shall be promptly refunded in its entirety.

3011 3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be
3012 set forth on the first page of the purchase contract in boldface print of not less than 12 point
3013 type.

3014 4. The prospective purchaser may cancel by written notice, hand-delivered or sent by
3015 United States mail, return receipt requested, to the declarant or to any sales agent of the
3016 declarant at any time prior to the formation of a contract for the sale or lease of a condominium
3017 unit or an interest in such unit. Such agreement shall not contain any provision for waiver or any
3018 other provision in derogation of the rights of the prospective purchaser as contemplated by this
3019 section, nor shall any such provision be a part of any ancillary agreement.

Drafting note: Proposed subdivision 4 contains substantive language logically relocated from the definition of "nonbinding reservation agreement" in proposed § 55.1-xxx [§ 55-79.41] to this section, which contains provisions related to disposition of units.

Technical changes are made.

§ ~~55-79.89~~ 55.1-xxx. Application for registration; fee.

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

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

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

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

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions; ~~and~~ and the extent and nature of his interest in the applicant or the condominium, as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the ~~agency~~ Common Interest Community Board, of the condition of the title to the condominium project, including encumbrances, as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney; not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the ~~agency~~ Common Interest Community Board;

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

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

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

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

10. Plats and plans of the condominium that comply with the provisions of § ~~55-79.58~~ 55.1-xxx other than the certification requirements ~~thereof~~, and ~~which that~~ show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the ~~agency~~ Common Interest Community Board may establish by regulation or order requirements in lieu of the provisions of § ~~55-79.58~~ 55.1-xxx for plats and plans of a condominium located outside ~~this the~~ Commonwealth;

11. The proposed public offering statement;

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

13. A current financial statement or other documentation to demonstrate the declarant's financial ability to complete all proposed improvements on the condominium; and

14. Any other information, including any current financial statement, which the agency by its that the Common Interest Community Board's regulations ~~requires~~ require for the protection of purchasers.

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

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

D. Each application shall be accompanied by a fee in an amount established by the agency Common Interest Community Board pursuant to § 54.1-113. All fees shall be remitted by the agency Common Interest Community Board to the State Treasurer; and shall be ~~placed to the credit of~~ credited to the Common Interest Community Management Information Fund established pursuant to § ~~55-529~~ 55.1-xxx.

Drafting note: Throughout the section, the term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls under the purview of the Department of Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate. An additional subdivision, proposed subdivision A 13, is added in subsection A to emphasize that a financial statement or other documentation to demonstrate a declarant's financial ability to complete proposed improvements on a condominium, is required documentation to be included with the application for registration of the condominium. Currently, subdivision A 13 refers to the financial statement in the context of other information that may be required by regulation to be included with the registration application. Technical changes are made.

§ ~~55-79.90~~ 55.1-xxx. Public offering statement; condominium securities.

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

1. The name and principal address of the declarant and the condominium;
2. A general narrative description of the condominium stating the total number of units in the offering; ~~the total number of units planned to be sold and rented;~~ and the total number of

units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control; a projected budget for at least the first year of the condominium's operation ~~(, including projected common expense assessments for each unit);~~ and provisions for reserves for capital expenditures and restraints on alienation;

4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

6. The significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium;

7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § ~~55-79.79~~ 55.1-xxx;

9. A statement that, pursuant to subdivision A 2 of § ~~55-79.88~~ 55.1-xxx, the purchaser may cancel the disposition within five calendar days of delivery of the current public offering statement or within five calendar days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium ~~which that~~ are planned but not yet begun, or begun but not yet completed. ~~Said~~ Such statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be

completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

11. If the units in the condominium are being subjected to a time-share instrument pursuant to § ~~55-367~~ 55.1-xxx, the information required to be disclosed by § ~~55-374~~ 55.1-xxx;

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

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

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

15. Additional information required by the ~~agency~~ Common Interest Community Board to assure full and fair disclosure to prospective purchasers.

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

C. The ~~agency~~ Common Interest Community Board may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without

3152 notifying the ~~agency~~ Common Interest Community Board and without making appropriate
3153 amendment of the public offering statement. A public offering statement is not current unless all
3154 amendments are incorporated.

3155 D. If an interest in a condominium is currently registered with the U.S. Securities and
3156 Exchange Commission ~~of the United States~~, a declarant satisfies all requirements relating to the
3157 preparation of a public offering statement in this chapter if he delivers to the purchaser and files
3158 with the ~~agency~~ Common Interest Community Board a copy of the public offering statement
3159 filed with the Securities and Exchange Commission. An interest in a condominium is not a
3160 security under the provisions of the Securities Act (§ 13.1-501 et seq.).

3161 **Drafting note: Throughout the section, the term "agency" is replaced with**
3162 **"Common Interest Community Board"; the Common Interest Community Board falls**
3163 **under the purview of the Department of Professional and Occupational Regulation, a state**
3164 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**
3165 **subsection A, the word "rules" is stricken prior to the word "regulations" because an**
3166 **administrative agency promulgates regulations, not rules. In subdivision A 14, the phrase**
3167 **"but not limited to" is stricken following the word "including" on the basis of § 1-218,**
3168 **which states that throughout the Code "'Includes' means includes, but not limited to."**
3169 **Technical changes are made.**

3170 § ~~55-79.91~~ 55.1-xxx. Inquiry and examination.

3171 Upon receipt of an application for registration, the ~~agency~~ Common Interest Community
3172 Board shall conduct an examination of the material submitted to determine that:

- 3173 1. The declarant can convey or cause to be conveyed the units offered for disposition if
3174 the purchaser complies with the terms of the offer;
- 3175 2. There is reasonable assurance that all proposed improvements will be completed as
3176 represented;

3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the ~~agency~~ Common Interest Community Board in its regulations and afford full and fair disclosure;

4. The declarant has not, or if a corporation, its officers, and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in ~~this the~~ Commonwealth, United States, or any other state or foreign country within the past ~~ten~~ 10 years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; ~~and~~

5. The public offering statement requirements of this chapter have been satisfied; ~~and~~

6. All other requirements of this chapter and the Common Interest Community Board's regulations have been satisfied.

Drafting note: Throughout the section, the term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls under the purview of the Department of Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate. An additional subdivision, proposed subdivision 6, is added to clarify that the Common Interest Community Board is required to determine whether the requirements of the Virginia Condominium Act and the Common Interest Community Board's regulations have been complied with as part of the required examination of material submitted with an application for registration. Technical changes are made.

~~§ 55-79.92 55.1-xxx.~~ Notice of filing and registration.

A. Upon receipt of the application for registration, the ~~agency~~ Common Interest Community Board shall, ~~within five business days,~~ issue a notice of filing to the applicant within five business days. In the case of receipt of an application for a condominium that is a conversion condominium, the ~~agency~~ Common Interest Community Board shall, ~~within five business days,~~ also issue within five business days a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, ~~which and the~~

notice shall include the name and address of the applicant and the name and address or location of the proposed condominium. Within ~~sixty~~ 60 days from the date of the notice of filing, the agency Common Interest Community Board shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within ~~sixty~~ 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the agency Common Interest Community Board affirmatively determines, upon inquiry and examination, that the requirements of ~~§§ 55-79.89 and 55-79.91 this chapter and the Common Interest Community Board's regulations~~ have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

C. If the agency Common Interest Community Board determines upon inquiry and examination that any of the requirements of ~~§§ 55-79.89 and 55-79.91 this chapter and the Common Interest Community Board's regulations~~ have not been met, the agency Common Interest Community Board shall notify the applicant that the application for registration must be corrected in the particulars specified within ~~twenty~~ 20 days. If the requirements are not met within the time allowed, the agency Common Interest Community Board shall enter an order rejecting the registration ~~which, and such order~~ shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for ~~twenty~~ 20 days after issuance of the order. During this ~~twenty-day~~ 20-day period, the applicant may petition for reconsideration and shall be entitled to a hearing ~~or to~~ correct the particulars specified in the agency's Common Interest Community Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, is given to the applicant.

Drafting note: Throughout the section, the term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls under the purview of the Department of Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate. In

subsections B and C, references to the requirements that must be met by an applicant for registration are updated for clarity and accuracy. Technical changes are made.

§ ~~55-79.93~~ 55.1-xxx. Annual report by declarant.

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

Drafting note: The term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls under the purview of the Department of Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate.

§ ~~55-79.93:1~~ 55.1-xxx. Annual report by unit owners' association.

A. The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the ~~agency~~ Common Interest Community Board. The filing of the annual report required by this section shall ~~commence~~ begin upon the termination of the declarant control period pursuant to § ~~55-79.74~~ 55.1-xxx. The annual report shall be accompanied by a fixed fee in an amount established by the ~~agency~~ Common Interest Community Board.

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

~~C.~~ The unit owners' association shall also remit to the ~~agency~~ Common Interest Community Board an annual payment as follows:

1. The lesser of:

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

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

2. For the purposes of ~~clause b of subsection C subdivision B 1 b~~, no minimum payment shall be less than ~~\$10.00~~ \$10.

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

Drafting note: Throughout the section, the term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls under the purview of the Department of Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate. Existing subsection B is removed as unnecessary; per subsection A, the referenced annual report form is prescribed by the Common Interest Community Board regulations. Technical changes are made.

§ ~~55-79.93:2~~ 55.1-xxx. Termination of registration.

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

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

1. The declarant has not filed an annual report in accordance with § ~~55-79.93~~ 55.1-xxx for three or more consecutive years; or

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

Drafting note: Throughout the section, the term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls

under the purview of the Department of Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate.

§ ~~55-79.94~~ 55.1-xxx. Conversion condominiums; special provisions.

A. For the purposes of this section:

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

"Certified nonprofit housing corporation" means a nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that has been certified by a locality as actively engaged in producing or preserving affordable housing as determined by criteria established by the locality.

"Disabled" means a person suffering from a severe, chronic physical or mental impairment that results in substantial functional imitations.

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

B. Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of § ~~55-79.90~~ 55.1-xxx the following:

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

2. Information on the actual expenditures made on all repairs, maintenance, operation, or upkeep of the subject building ~~or buildings~~ within the last three years, set forth ~~tabularly in a~~ tabular format with the proposed budget of the condominium; and cumulatively broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws.

If such building ~~or buildings have~~ has not been occupied for a period of three years, then the information shall be set forth for the maximum period such building ~~or buildings have~~ has been occupied;

3308 3. A description of any provisions made in the budget for reserves for capital
3309 expenditures and an explanation of the basis for such reserves, or, if no provision is made for
3310 such reserves, a statement to that effect;

3311 4. A statement of the declarant as to the present condition of all structural components
3312 and major utility installations in the condominium, ~~which statement shall include~~ including the
3313 approximate dates of construction, installation, and major repairs; and the expected useful life of
3314 each such item, together with the estimated cost ~~(in current dollars)~~ of replacing each ~~of the~~
3315 same such item;

3316 5. If any building included or that may be included in the condominium was
3317 substantially completed prior to July 1, 1978, a statement that each such building has been
3318 inspected for asbestos in accordance with standards in effect at the time of inspection; or that an
3319 asbestos inspection will be conducted; and whether asbestos requiring response actions has
3320 been found; and if found, that response actions have been or will be completed in accordance
3321 with applicable standards prior to the conveyance of any unit in such building. Any asbestos
3322 management program or response action undertaken by the building owner shall comply with
3323 the standards promulgated pursuant to § 2.2-1164.

3324 ~~B. C.~~ B. C. In the case of a conversion condominium, the declarant shall give at the time
3325 specified in subsection ~~C of this section~~ D, formal notice to each of the tenants of the building ~~or~~
3326 ~~buildings which~~ that the declarant has submitted or intends to submit to the provisions of this
3327 chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies; or (ii)
3328 the projected common expense assessments against that unit for at least the first year of the
3329 condominium's operation; or (iii) any relocation services or assistance, public or private, of which
3330 the declarant is aware; or (iv) any measures taken or to be taken by the declarant to reduce the
3331 incidence of tenant dislocation; or and (v) the details of the relocation plan, if any is provided by
3332 the declarant, to assist tenants in relocating. During the first ~~sixty~~ 60 days after such notice is
3333 mailed or hand delivered, each of the ~~said~~ tenants shall have the exclusive right to purchase the
3334 unit he occupies, but only if such unit is to be retained in the conversion condominium without

substantial alteration in its physical layout. If the conversion condominium is subject to local ordinances that have been adopted pursuant to subsections ~~F G~~ and ~~G H~~, any tenant who is disabled or elderly may assign the exclusive right to purchase his unit to a ~~government~~ governmental agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent, following the provisions of subsection ~~F G~~. The acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (i) exceed the greater of one unit or five percent of the total number of units in the condominium or (ii) impede the condominium conversion process. In determining which, if any, units shall be acquired pursuant to this subsection, preference shall be given to elderly or disabled tenants.

The notice required ~~above in this subsection~~ shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the conversion to condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in § ~~55-222 55.1-xxx~~, except that, despite the provisions of § ~~55-222 55.1-xxx~~, a tenancy from ~~month to month~~ month-to-month may only be terminated upon 120 days' notice when such termination is in regard to the creation of a conversion condominium. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the declarant, in order to then terminate the tenancy, such declarant shall give the tenant a further notice as provided in § ~~55-222 55.1-xxx~~. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided by subsection A of § ~~55-248.18 55.1-xxx~~ and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations, or improvements, provided that (i) the making of the same does not constitute an actual or constructive eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. The declarant shall also provide general notice to the tenants of the condominium or proposed condominium at the time of application to the ~~agency~~ Common Interest Community Board in addition to the formal notice required by this subsection.

3362 C.D. The declarant of a conversion condominium shall, in addition to the requirements
3363 of § ~~55-79.89~~ 55.1-xxx, include with the application for registration a copy of the formal notice
3364 set forth in subsection B.C and a certified statement that such notice, fully complying with the
3365 provisions of subsection B.C, shall be, at the time of the registration of such condominium,
3366 mailed or delivered to each of the tenants in the building ~~or buildings~~ for which registration is
3367 sought. The price and projected common expense assessments for each unit need not be filed
3368 with the agency Common Interest Community Board until such notice is mailed to the tenants.

3369 D.E. Notwithstanding the provisions of § ~~55-79.40 of this chapter~~ 55.1-xxx, in the case
3370 of any conversion condominium created under the provisions of the Horizontal Property Act (§
3371 ~~55-79.4~~ 55.1-xxx et seq.) for which a final report has not been issued by the agency Common
3372 Interest Community Board pursuant to § ~~55-79.24~~ 55.1-xxx prior to June 1, 1975, the provisions
3373 of subsections ~~A and B of this section~~ and C shall apply and the declarant shall be required to
3374 furnish evidence of full compliance with subsections ~~A and B~~ and C prior to the issuance by the
3375 agency Common Interest Community Board of a final report for such conversion condominium.

3376 E.F. Any ~~county, city or town~~ locality may require by ordinance that the declarant of a
3377 conversion condominium file with that governing body all information ~~which that~~ is required by
3378 the agency Common Interest Community Board pursuant to § ~~55-79.89~~ 55.1-xxx and a copy of
3379 the formal notice required by subsection B.C. Such information shall be filed with that
3380 governing body when the application for registration is filed with the agency Common Interest
3381 Community Board, and such copy of the formal notice shall be filed with that governing body.
3382 There shall be no fees for such filings.

3383 F.G. The governing body of any ~~county, city or town~~ locality may enact an ordinance
3384 requiring that elderly or disabled tenants occupying as their residence, at the time of issuance of
3385 the general notice required by subsection B.C, apartments or units in a conversion condominium
3386 be offered leases or extensions of leases on the apartments or units they then occupied, or on
3387 other apartments or units of at least equal size and overall quality. The terms and conditions
3388 thereof of such leases or extensions shall be as agreed upon by the lessor and the lessee,

provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion condominium and such lease shall include or incorporate by reference the bylaws ~~and/or~~ or rules and regulations, if any, of the association. No such ordinance ~~may~~ shall require that such leases or extensions be offered on more than ~~twenty~~ 20 percent of the apartments or units in such conversion condominium, nor ~~may~~ shall any such ordinance require that such leases or extensions extend beyond three years from the date of such notice. Such leases or extensions shall not be required, however, in the case of any apartments or units ~~which~~ that will, in the course of the conversion, be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

~~For the purposes of this section:~~

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

~~"Certified nonprofit housing corporation" means a nonprofit organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code that has been certified by a locality as actively engaged in producing or preserving affordable housing as determined by criteria established by the locality.~~

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

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

~~G. H.~~ The governing body of any county utilizing the optional urban county executive form of ~~optional~~ government (§§ § 15.2-800 through 15.2-858 et seq.) or the optional county manager plan of ~~optional~~ government (§§ § 15.2-702 through 15.2-749 et seq.), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential

condominium converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount ~~which~~ that the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Transportation.

Drafting note: Throughout the section, the term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls under the purview of the Department of Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate. In subdivision B 2 and subsections C and D, the phrase "or buildings" is stricken after the term "building" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. The definitions in existing subsection F are relocated to subsection A per current Code style to locate definitions at the beginning of a section. In proposed subsections F and G, the phrase "county, city, and town" is replaced with the term "locality" on the purpose of § 1-221, which states that throughout the Code "'Locality' means a county, city, or town as the context may require." In proposed subsection G, the term "and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its meaning "or" in the sense of either or both/all. In proposed subsection G, "may" is replaced with "shall" because it is used in this section to express an absolute prohibition, which, to be consistent throughout the Code, is more properly expressed by the phrase "No such ordinance shall." Technical changes are made.

~~§ 55-79.95~~ § 55.1-xxx. Escrow of deposits.

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose ~~which~~ that is federally insured and located in ~~Virginia;~~ the Commonwealth, except where such deposits are being held by a real estate broker or attorney licensed under the laws of ~~this~~ the Commonwealth, such

funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

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

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

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

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

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

1. \$75,000 or less, the blanket bond shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket bond shall be \$1 million; and
5. \$1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the

Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket letter of credit shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket letter of credit shall be \$1 million; and
5. \$1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

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

Drafting note: Technical changes.

§ ~~55-79.96~~ 55.1-xxx. Declarant to deliver declaration, ~~etc.~~, to purchaser.

The declarant shall within ~~ten~~ 10 days of recordation of the condominium instruments as provided for in §§ ~~55-79.45~~ 55.1-xxx and ~~55-79.49 hereof~~, 55.1-xxx forward to each purchaser at his last known address by first-class mail, return receipt requested, an exact copy of the recorded declaration and bylaws.

Drafting note: Technical changes.

§ ~~55-79.99~~ 55.1-xxx. Investigations and proceedings.

3496 A. Whenever the ~~agency~~ Common Interest Community Board receives a written
3497 complaint ~~which that~~ appears to state a valid claim, the ~~agency~~ Common Interest Community
3498 Board shall make necessary public or private investigations in accordance with law within or
3499 outside of ~~this the~~ Commonwealth to determine whether any declarant, ~~or~~ its agents, employees,
3500 or other representatives have violated or are about to violate this chapter or any ~~rule~~ Common
3501 Interest Community Board regulation or order ~~hereunder~~, or to aid in the enforcement of this
3502 chapter or in the prescribing of ~~rules,~~ Common Interest Community Board regulations and
3503 forms ~~hereunder~~. The ~~agency~~ Common Interest Community Board may also in like manner and
3504 with like authority investigate written complaints against persons other than the declarant, ~~or~~ its
3505 agents, employees, or other representatives.

3506 B. For the purpose of any investigation or proceeding under this chapter, the ~~agency~~
3507 Common Interest Community Board or any officer designated by ~~rule~~ regulation may
3508 administer oaths or affirmations, and upon its own motion or upon request of any party shall
3509 subpoena witnesses, compel their attendance, take evidence, and require the production of any
3510 matter ~~which that~~ is relevant to the investigation, including the existence, description, nature,
3511 custody, condition, and location of any books, documents, or other tangible things and the
3512 identity and location of persons having knowledge of relevant facts or any other matter
3513 reasonably calculated to lead to the discovery of material evidence.

3514 C. Upon failure to obey a subpoena or to answer questions propounded by the
3515 investigating officer and upon reasonable notice to all persons affected ~~thereby by such failure,~~
3516 the ~~agency~~ Common Interest Community Board may apply to the Circuit Court of the ~~City~~
3517 County of ~~Richmond~~ Henrico for an order compelling compliance.

3518 **Drafting note: Throughout the section, the term "agency" is replaced with**
3519 **"Common Interest Community Board"; the Common Interest Community Board falls**
3520 **under the purview of the Department of Professional and Occupational Regulation, a state**
3521 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**
3522 **subsection A, the word "rule" is replaced with "regulation" because an administrative**

agency promulgates regulations, not rules. Similarly, in subsection A, the word "rules" is stricken prior to the word "regulation" because an administrative agency promulgates regulations, not rules. In subsection B, the word "rule" is replaced with "regulation" because an administrative agency promulgates regulations, not rules. In subsection C, reference to the Circuit Court of the City of Richmond is changed to the Circuit Court of the County of Henrico; the Common Interest Community Board is under the purview of the Department of Professional and Occupational Regulation, which has relocated from the City of Richmond to the County of Henrico, so venue is proper in the County of Henrico. Technical changes are made.

§ ~~55-79.100~~ 55.1-xxx. Cease and desist orders.

~~(a) If the agency~~ A. The Common Interest Community Board may issue an order requiring a person to cease and desist from any of the unlawful practices enumerated in subdivisions 1 through 5 and to take such affirmative action as in the judgment of the Common Interest Community Board will carry out the purposes of this chapter if the Common Interest Community Board determines after notice and hearing that ~~a such~~ a person has:

~~(1)~~ 1. Violated any provision of this chapter;

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

~~(3)~~ 3. Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the ~~agency~~ Common Interest Community Board;

~~(4)~~ 4. Disposed of any units ~~which that~~ that have not been registered with the ~~agency~~ Common Interest Community Board; or

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

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

Drafting note: Throughout the section, the term "agency" is replaced with "Common Interest Community Board"; the Common Interest Community Board falls under the purview of the Department of the Professional and Occupational Regulation, a state agency, and so the term "agency" was unnecessarily confusing and inaccurate. The language at the end of subsection A is relocated to the beginning of the subsection. In subdivision A 5, the word "rule" is replaced with "regulation" because an administrative agency promulgates regulations, not rules. Technical changes are made.

~~§ 55-79.104~~ § 55.1-xxx. Revocation of registration.

~~(a)~~ A. A registration may be revoked by the Common Interest Community Board after notice and hearing upon a written finding of fact in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), which shall be accompanied by a concise and explicit statement of the underlying facts supporting the finding, that the declarant has:

~~(1)~~ 1. Failed to comply with the terms of a cease and desist order;

~~(2)~~ 2. Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

~~(3)~~ 3. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

(4) ~~4.~~ Failed faithfully to perform any stipulation or agreement made with the ~~agency~~
Common Interest Community Board as an inducement to grant any registration, to reinstate any
registration, or to approve any promotional plan or public offering statement; or

(5) ~~5.~~ Made intentional misrepresentations or concealed material facts in an application
for registration.

~~Findings of fact, if set forth in statutory language, shall be accompanied by concise and
explicit statement of the underlying facts supporting the findings.~~

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

**Drafting note: Throughout the section, the term "agency" is replaced with
"Common Interest Community Board"; the Common Interest Community Board falls
under the purview of the Department of the Professional and Occupational Regulation, a
state agency, and so the term "agency" was unnecessarily confusing and inaccurate. In
subsection A, reference to the Common Interest Community Board is added to clarify
what body has the authority to revoke a registration. In subsection A, reference to the
Administrative Process Act is added to clarify that a notice and hearing on the revocation
of a registration is required to comply with such Act. The language at the end of
subsection A is relocated to the beginning of the subsection. Technical changes are made.**

~~§ 55-79.102~~ 55.1-xxx. Judicial review.

Proceedings for judicial review shall be in accordance with the provisions of the
Administrative Process Act (§ 2.2-4000 et seq.).

Drafting note: No change.

~~§ 55-79.103~~ 55.1-xxx. Penalties.

Any person who willfully violates any provision of ~~§§ 55-79.87, § 55.1-xxx, 55-79.88~~
55.1-xxx, 55-79.89 55.1-xxx, 55-79.90 55.1-xxx, 55-79.93 55.1-xxx, 55-79.94 55.1-xxx, 55-
79.95, or 55.1-xxx or any rule regulation adopted under or order issued pursuant to ~~§ 55-79.98~~

[55.1-xxx](#), or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact ~~shall be~~ is guilty of a misdemeanor and may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than \$50,000; or he may be imprisoned for not more than 6 six months; or both, for each offense.

Drafting note: The word "rule" is replaced with "regulation" because the Common Interest Community Board, an administrative agency whose powers and duties are contained in existing § 55-79.98 referenced in this section, promulgates regulations, not rules.

Article 5.

Disclosure Requirements; Authorized Fees.

Drafting note: Proposed Article 5 contains existing §§ 55-79.97 through 55-79.97:3, which contain provisions related to the resale disclosure requirement for condominiums. This proposed article is consistent with the organization of the Property Owners' Association Act (§ 55.1-xxx et seq.), which has a stand-alone article (Article 2) for resale disclosure provisions. Existing § 55-79.97 is proposed to be divided into five sections both for clarity and to mirror the corresponding sections in the Property Owners' Association Act.

§ ~~55-79.97~~ [55.1-xxx](#). Resale by purchaser; contract disclosure; right of cancellation.

A. For purposes of this article:

"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this article.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-xxx [contents of resale certificate; delivery].

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Receives, received, or receiving" the resale certificate means that the purchaser or purchaser's authorized agent has received the resale certificate by one of the methods specified in this article.

"Resale certificate update" means an update of the financial information referenced in subdivisions A 2 through 9 and 12 of § 55.1-xxx [contents of resale certificate; delivery]. The update shall include a copy of the original resale certificate.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

B. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and subsection A of § 55.1-xxx, the unit owner shall disclose in the contract that (i) the unit is located within a development which that is subject to the Condominium Act; (ii) the Condominium Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available; (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55.1-xxx, as appropriate; and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-xxx, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C of § 55.1-xxx [Contents of resale

[certificate; delivery](#)], or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

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

~~C. D.~~ The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § ~~55-79.97:1~~ [55.1-xxx](#), as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate or is notified that the resale certificate will not be available on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate or notice that the resale certificate will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt [is](#) obtained; or (iii) within six days after the postmark date if the resale certificate or notice that the resale certificate will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the resale certificate will not be available and the resale certificate is not delivered to the purchaser.

Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

~~a. 1.~~ Hand delivery;

~~b. 2.~~ United States mail, postage prepaid, provided [that](#) the sender retains sufficient proof of mailing, ~~which may be either a United States postal certificate of mailing or in the form of~~ a certificate of service prepared by the sender confirming such mailing;

~~c. 3.~~ Electronic means, provided [that](#) the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

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

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

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

A. A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § ~~55-79.84~~ 55.1-xxx, which need not be notarized, and, if applicable, an appropriate statement pursuant to § ~~55-79.85~~ 55.1-xxx;

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

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

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

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

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

3708 7. A statement of the nature and status of any pending suits or unpaid judgments to
3709 which the unit owners' association is a party ~~which that~~ either could or would have a material
3710 impact on the unit owners' association or the unit owners or ~~which that~~ relates to the unit being
3711 purchased;

3712 8. A statement setting forth what insurance coverage is provided for all unit owners by
3713 the unit owners' association, including the fidelity bond maintained by the unit owners'
3714 association, and what additional insurance coverage would normally be secured by each
3715 individual unit owner;

3716 9. A statement that any improvements or alterations made to the unit, or the limited
3717 common elements assigned thereto, are or are not in violation of the condominium instruments;

3718 10. A copy of the current bylaws, rules and regulations, and architectural guidelines
3719 adopted by the unit owners' association and the amendments ~~thereto to any such documents~~;

3720 11. A statement of whether any portion of the condominium ~~or any portion thereof~~ is
3721 located within a development subject to the Property Owners' Association Act (§ ~~55-508~~ 55.1-
3722 xxx et seq.) ~~of Chapter 26 of this title~~;

3723 12. A copy of the notice given to the unit owner by the unit owners' association of any
3724 current or pending rule or architectural violation;

3725 13. A copy of any approved minutes of the executive ~~organ~~ board and unit owners'
3726 association meetings for the six calendar months preceding the request for the resale certificate;

3727 14. Certification that the unit owners' association has filed with the Common Interest
3728 Community Board the annual report required by § ~~55-79.93:1; which certification shall indicate~~
3729 55.1-xxx, the filing number assigned by the Common Interest Community Board, and the
3730 expiration date of such filing;

3731 15. A statement of any limitation on the number of persons who may occupy a unit as a
3732 dwelling;

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

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

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

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

C. The resale certificate shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or the seller's authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or the seller's authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or the seller's authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The resale certificate shall not be delivered in hard copy if the requester has requested delivery of such resale certificate electronically. If the resale

certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § ~~55-79.97:1~~ 55.1-xxx. If the seller or the seller's authorized agent asks that the resale certificate be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the unit owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § ~~55-79.97:1~~ 55.1-xxx. Regardless of whether the resale certificate is delivered in paper form or electronically, the preparer of the resale certificate shall provide such resale certificate directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

E. Subject to the provisions of § ~~55-79.87~~ 55.1-xxx, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ ~~55-79.1~~ 55.1-xxx et seq.).

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

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

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

~~H. For purposes of this chapter:~~

~~"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.~~

~~"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.~~

~~"Receives, received, or receiving" the resale certificate means that the purchaser or purchaser's authorized agent has received the resale certificate by one of the methods specified in this section.~~

~~"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.~~

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

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

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

~~1. Require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical~~

~~location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Virginia Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed; or~~

~~2. Require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § 55-79.77 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.~~

Drafting note: Existing § 55-79.97 is proposed to be divided into five sections. First, proposed § 55.1-xxx [Resale by purchaser; contract disclosure; right of cancellation] contains provisions from existing subsections A, B, part of C, and H. Additionally, the definitions of "financial update" and "resale certificate update" are relocated from existing § 55-79.41 to proposed subsection A of § 55.1-xxx [Resale by purchaser; contract disclosure; right of cancellation] because they are terms used in relation to resale disclosures. In proposed subdivision D 2 of § 55.1-xxx [Resale by purchaser; contract disclosure; right of cancellation], the reference to a U.S. postal certificate of mailing is stricken because that type of certificate is no longer used.

Second, proposed § 55.1-xxx [Contents of resale certificate; delivery] contains part of existing subsection C and subsections D, E, I, and J of existing § 55-79.97. In subdivisions A 2, 5, and 13, the term "executive organ" is changed to "executive board" for consistency with the term as it is defined in § 55.1-xxx [§ 55-79.41]. In subdivision A 16, the phrase "but not limited to" is stricken following the word "including" on the basis of §

1-218, which states that throughout the Code "'Includes' means includes, but not limited to."

Third, existing subsection F and G of § 55-79.97 are relocated to proposed § 55.1-xxx [Exceptions to disclosure requirements].

Fourth and fifth, existing subsection K is relocated as proposed §§ 55.1-xxx and 55.1-xxx [for sale signs and authorized representatives; before § 55-79.81].

Technical changes are made.

~~§ 55-79.97:1~~ 55.1-xxx. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, for the preparation and issuance of the resale certificate required by § ~~55-79.97~~ 55.1-xxx, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

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

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

2. ~~The~~ For preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150 for no more than two hard copies; or (ii) electronic format, a fee not to exceed a total of \$125, for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. Only one fee shall be charged for the preparation and delivery of the resale certificate;

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

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

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

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

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § ~~55-79.83~~ 55.1-xxx, if not paid at settlement or within 60 days of the delivery of the resale certificate, whichever occurs first.

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

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

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requester, payable at settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and ~~§ 55-79.83~~ [55.1-xxx](#). The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

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

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the

3920 seller or the seller's authorized agent or the purchaser or the purchaser's authorized agent, may
3921 request a resale certificate update. The requester shall specify whether the resale certificate
3922 update shall be delivered electronically or in hard copy and shall specify the complete contact
3923 information of the parties to whom the update shall be delivered. The resale certificate update
3924 shall be delivered within 10 days of the written request.

3925 H. The settlement agent may request a financial update. The requester shall specify
3926 whether the financial update shall be delivered electronically or in hard copy and shall specify
3927 the complete contact information of the parties to whom the update shall be delivered. The
3928 financial update shall be delivered within three business days of the written request.

3929 I. A reasonable fee for the resale certificate update or financial update may be charged
3930 by the preparer, not to exceed \$50. At the option of the purchaser or the purchaser's authorized
3931 agent, the requester may request that the unit owners' association or the common interest
3932 community manager perform an additional inspection of the unit, as authorized in the
3933 declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be
3934 collected at the time settlement occurs on the sale of the property. The settlement agent shall
3935 escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor
3936 its common interest community manager, if any, shall require cash, check, certified funds, or
3937 credit card payments at the time the request is made for the resale certificate update. The
3938 requester may request that the specified update be provided in hard copy or in electronic form.

3939 J. No unit owners' association or common interest community manager may require the
3940 requester to request the specified update electronically. The seller or the seller's authorized agent
3941 shall continue to have the right to request a hard copy of the specified update in person at the
3942 principal place of business of the unit owners' association. If the requester asks that the specified
3943 update be provided in electronic format, neither the unit owners' association nor its common
3944 interest community manager may require the requester to pay any fees to use the provider's
3945 electronic network or system. A copy of the specified update shall be provided to the seller or
3946 the seller's authorized agent.

3947 K. When a resale certificate has been delivered as required by § ~~55-79.97~~ 55.1-xxx, the
3948 unit owners' association shall, as to the purchaser, be bound by the statements set forth ~~therein~~ in
3949 the certificate as to the status of the assessment account and the status of the unit with respect to
3950 any violation of the condominium instruments as of the date of the statement unless the
3951 purchaser had actual knowledge that the contents of the resale certificate were in error.

3952 L. If the unit owners' association or its common interest community manager has been
3953 requested in writing to furnish the resale certificate required by § ~~55-79.97~~ 55.1-xxx, failure to
3954 provide the resale certificate substantially in the form provided in this section shall be deemed a
3955 waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws,
3956 rules and regulations, or architectural guidelines existing as of the date of the request with
3957 respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an
3958 amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000.
3959 The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules
3960 and regulations, and architectural guidelines of the unit owners' association as to all matters
3961 arising after the date of the settlement of the sale.

3962 M. The Common Interest Community Board may assess a monetary penalty for failure
3963 to deliver the resale certificate within 14 days against any (i) unit owners' association pursuant
3964 to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and
3965 regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349
3966 or 54.1-2352, as applicable.

3967 **Drafting note: Technical changes.**

3968 § ~~55-79.97:2~~ 55.1-xxx. Properties subject to more than one declaration.

3969 If the unit is subject to more than one declaration, the unit owners' association or its
3970 common interest community manager may charge the fee authorized by § ~~55-79.97:1~~ 55.1-xxx
3971 for each of the applicable associations, provided, however, that no association ~~may~~ shall charge
3972 an inspection fee unless the association has architectural control over the unit.

Drafting note: The word "may" is replaced with "shall" because the phrase "no association may" as used in this section expresses an absolute prohibition, which, to be consistent throughout the Code, is more properly expressed by the phrase "no association shall."

~~§ 55-79.97:3~~ [§ 55.1-xxx](#). Requests by settlement agents.

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

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

Drafting note: No change.

[§ 55.1-xxx. Exceptions to disclosure requirements.](#)

~~F. A.~~ The resale certificate required by this ~~section~~ [article](#) need not be provided in the case of:

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

4000 | [G.B.](#) In any transaction in which a resale certificate is required and a trustee acts as the
4001 seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit
4002 owners' association and provide the resale certificate to the purchaser.

4003 **Drafting note: Existing subsections F and G of § 55-79.97 are relocated to this**
4004 **proposed section for consistency with the organization for the provisions of the resale**
4005 **disclosures in the proposed Property Owners' Association Act (§ 55.1-xxx et seq.).**

4006 #

CHAPTER ~~24~~ XX.

VIRGINIA REAL ESTATE COOPERATIVE ACT.

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

Article 1.

General Provisions.

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

~~§ 55-424. Title.~~

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

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

~~§ 55-426~~ 55.1-xxx. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Drafting note: Technical changes.

§ ~~55-425~~ 55.1-xxx. Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~§ 55-429.55.1-xxx.~~ Applicability of local ordinances, regulations, and building codes; ~~county and municipal~~ local authority.

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

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

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

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

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

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

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

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

~~§ 55-430~~ 55.1-430. Eminent domain.

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

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

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

Drafting note: No change.

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

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

Drafting note: Technical change.

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

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

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

1. The commercial setting of the negotiations;

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

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

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

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

Drafting note: Technical changes.

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

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

Drafting note: No change.

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

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

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

Drafting note: Technical changes.

§ ~~55-437~~. Repealed.

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

Article 2.

Creation, Alteration, and Termination of Cooperatives.

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

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

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

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

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

Technical changes are made.

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

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

Drafting note: Technical changes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Drafting note: Technical changes.

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

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

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

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

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

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

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

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

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

C. If the expiration or termination of a lease decreases the number of units in a 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.

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

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

Technical changes are made.

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

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

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

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

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

Technical changes are made.

§ ~~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:

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

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

Drafting note: Technical changes.

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

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

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

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

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

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

Technical change.

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

A. Subject to the provisions of the declaration and other provisions of law, the 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, ~~and~~
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; ~~and~~ (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

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

Drafting note: Technical change.

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

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

Drafting note: Technical changes.

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

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

Drafting note: No change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Drafting note: Technical changes.

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

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

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

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

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

Drafting note: Technical changes.

Article 3.

Management of Cooperatives.

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

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

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

Drafting note: Technical changes.

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

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

1. Adopt and amend bylaws and rules and regulations;
2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from proprietary lessees;
3. Hire and discharge managing agents and other employees, agents, and independent contractors;
4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more proprietary lessees on matters affecting the cooperative;
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 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.

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

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

Technical changes are made.

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

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

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

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

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

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

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

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

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

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

Drafting note: Technical changes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. On his transferor, other than:

(1) Misrepresentations by any previous declarant;

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

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

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

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

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

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

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

Drafting note: Technical changes.

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

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

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

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

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

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

Drafting note: Technical changes.

§ ~~55-470~~ 55.1-xxx. Insurance.

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

1. Property insurance on the common elements and units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any 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

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

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

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

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

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

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

Drafting note: Technical changes.

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

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

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

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

C. To the extent required by the declaration:

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

2. Any common expense or portion ~~thereof~~ benefiting fewer than all of the units must be 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~~ herein in this subdivision has not been completed; provided, that nothing contained
1304 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The reasonable expenses of sale;
2. The reasonable expenses of securing possession before sale; holding, maintaining, and preparing the cooperative interest for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the proprietary lessee, reasonable ~~attorney's~~ attorney fees and other legal expenses incurred by the association;
3. Satisfaction in the order of priority of any prior claims of record;
4. Satisfaction of the association's lien;
5. Satisfaction in the order of priority of any subordinate claim of record; and
6. Remittance of any excess to the proprietary lessee. Unless otherwise agreed, the proprietary lessee is liable for any deficiency.

K. If a cooperative interest is sold under subsection I, a good faith purchaser for value acquires the proprietary lessee's interest in the cooperative interest free of the association's debt ~~which~~ that gave rise to the lien under which the sale occurred and any subordinate interest, even 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 ~~§ 55-473.1~~ 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.

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

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

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

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

Drafting note: No change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. A statement that all restrictions in the declaration affecting use and occupancy of units and alienation of cooperative interests will apply to any units and cooperative interests 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.

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

Drafting note: Technical changes.

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

A. For the purposes of this section:

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

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

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

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

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

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

D.E. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of §§ ~~55-248.6~~ 55.1-xxx and ~~55-248.15~~ 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

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

Drafting note: Technical changes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ ~~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

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

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

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

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

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

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

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

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