

1 HOUSE BILL NO. _____

2 Offered _____

3 Prefiled _____

4
5 *A BILL to amend and reenact §§ 54.1-2105.1, 55-79.41, 55-79.58, 55-79.58:1, 55-79.74, 55-*
6 *79.79, 55-79.81, 55-79.84:1, 55-79.86, 55-79.89, 55-79.93:1, 55-79.95, 55-79.97, 55-79.98, 55-*
7 *362, 55-362.1, 55-374.2, 55-375, 55-392.1, 55-484, 55-487, 55-496, 55-504.1, 55-511, 55-512,*
8 *55-514.2, 55-516.1, 55-528, 55-529, and 55-530 of the Code of Virginia and to amend the Code*
9 *of Virginia by adding a new Chapter 23.3 of Title 54.1 consisting of sections numbered 54.1-*
10 *2345, 54.1-2346, 54.1-2347, 54.1-2348, 54.1-2349, 54.1-2350, 54.1-2351, 54.1-2352, 54.1-2353,*
11 *54.1-2354, 54.1-2355 and 55-530.1, relating to common interest communities.*

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13 Patron -- _____

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15 Referred to _____

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18 **Be it enacted by the General Assembly of Virginia:**

19 **1. That §§ 54.1-2105.1, 55-79.41, 55-79.58, 55-79.58:1, 55-79.74, 55-79.79, 55-79.81, 55-**
20 **79.84:1, 55-79.86, 55-79.89, 55-79.93:1, 55-79.95, 55-79.97, 55-79.98, 55-362, 55-362.1, 55-**
21 **374.2, 55-375, 55-392.1, 55-484, 55-487, 55-496, 55-504.1, 55-511, 55-512, 55-514.2, 55-**
22 **516.1, 55-528, 55-529, and 55-530 of the Code of Virginia are amended and reenacted, and**
23 **that the Code of Virginia is amended by adding a new Chapter 23.3 of Title 54.1 consisting**
24 **of sections numbered 54.1-2345, 54.1-2346, 54.1-2347, 54.1-2348, 54.1-2349, 54.1-2350, 54.1-**
25 **2351, 54.1-2352, 54.1-2353, 54.1-2354, 54.1-2355 and 55-530.1 as follows:**

26 § 54.1-2105.1. Other powers and duties of the Real Estate Board.

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

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

29 ~~2. Develop and disseminate an association annual report form for use in accordance with §§ 55-~~
30 ~~79.93:1, 55-504.1, and 55-516.1;~~

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

33 ~~4. Develop and disseminate a one-page form to accompany association disclosure packets~~
34 ~~required pursuant to § 55-512, which form shall summarize the unique characteristics of property~~
35 ~~owners' associations generally and shall make known to prospective purchasers the unusual and~~
36 ~~material circumstances affecting a lot owner in a property owners' association, including, but not~~
37 ~~limited to, the obligation of a lot owner to pay regular annual or special assessments to the~~
38 ~~association, and the penalty for failure or refusal to pay such assessments; the purposes for which~~

39 ~~such assessments may be used; and the importance the declaration of restrictive covenants and~~
40 ~~other governing documents play in association living.~~

41 § 54.1-2345. *Definitions.*

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

43 *"Association" has the same meaning specified in § 55-528.*

44 *"Board" means the Common Interest Community Board.*

45 *"Common interest community" has the same meaning specified in § 55-528.*

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

50 *"Declaration" has the same meaning specified in § 55-528.*

51 *"Governing board" shall mean the governing board of an association, including the executive*
52 *organ of a condominium unit owners' association, the executive board of a cooperative*
53 *proprietary lessees' association, and the board of directors of a property owners' association.*

54 *"Lot" has the same meaning specified in § 55-528.*

55 *"Management services" means (1) acting with the authority of an association in its business,*
56 *legal, financial, or other transactions with association members and nonmembers; (2) executing*
57 *the resolutions and decisions of an association or, with the authority of the association,*
58 *enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (3)*
59 *collecting, disbursing, or otherwise exercising dominion or control over money or other property*
60 *belonging to an association; (4) preparing budgets, financial statements, or other financial*
61 *reports for an association; (5) arranging, conducting, or coordinating meetings of an*
62 *association or the governing body of an association; (6) negotiating contracts or otherwise*
63 *coordinating or arranging for services or the purchase of property and goods for or on behalf of*
64 *an association; or (7) offering or soliciting to perform any of the aforesaid acts or services on*
65 *behalf of an association.*

66 § 54.1-2346. *License required; certification of employees.*

67 *A. Unless exempted by § 54.1-2347, any person, partnership, corporation or other entity offering*
68 *management services to a common interest community shall hold a valid license issued in*
69 *accordance with the provisions of this chapter prior to engaging in such management services.*

- 70 *B. Unless exempted by § 54.1-2347, any person, partnership, corporation or other entity offering*
71 *management services to a common interest community without being licensed in accordance*
72 *with the provisions of this chapter, shall be subject to the provisions of § 54.1-111 of this title.*
- 73 *C. On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a*
74 *common interest community manager that all employees of the common interest community*
75 *manager who have direct contact with the governing board of the association in the provision of*
76 *management services to a common interest community shall, within two years after employment*
77 *with the common interest community manager, hold a certificate issued by the Board certifying*
78 *the person possesses the character and minimum skills to engage properly in the provision of*
79 *management services to a common interest community or shall be under the direct supervision of*
80 *a certified employee of such common interest community manager.*
- 81 *D. On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a*
82 *common interest community manager that the common interest community manager shall obtain*
83 *and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the*
84 *common interest community manager against losses resulting from theft or dishonesty committed*
85 *by the officers, directors, and persons employed by the common interest community manager.*
86 *Such bond or insurance policy shall include coverage for losses of clients of the common interest*
87 *community manager resulting from theft or dishonesty committed by the officers, directors, and*
88 *persons employed by the common interest community manager. Such bond or insurance policy*
89 *shall provide coverage in an amount equal to the lesser of \$2,000,000 or the highest aggregate*
90 *amount of the operating and reserve balances of all associations under the control of the*
91 *common interest community manager during the prior fiscal year. The minimum coverage*
92 *amount shall be \$10,000.*
- 93 *E. On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a*
94 *common interest community manager that the common interest community manager certifies to*
95 *the Board (1) that the common interest community manager is in good standing and authorized*
96 *to transact business in Virginia; (2) that the common interest community manager has*
97 *established a code of conduct for the officers, directors, and persons employed by the common*
98 *interest community manager to protect against conflicts of interest, (3) that the common interest*
99 *community manager provides all management services pursuant to written contracts with the*
100 *associations to which such services are provided, (4) that the common interest community*
101 *manager has established a system of internal accounting controls to manage the risk of fraud or*
102 *illegal acts, and (5) that an independent certified public accountant reviews or audits the*
103 *financial statements of the common interest community manager at least annually in accordance*
104 *with standards established by the American Institute of Certified Public Accountants or by any*
105 *successor standard-setting authorities.*
- 106 *F. Prior to July 1, 2011, upon application the Board shall issue a provisional license to any*
107 *person, partnership, corporation or other entity offering management services to a common*
108 *interest community on or after the effective date of this section. Such provisional license will*
109 *expire on June 30, 2011 and may not be renewed.*
- 110 *§ 54.1-2347. Exceptions and exemptions generally.*

- 111 *A. The provisions of this chapter shall not be construed to prevent or prohibit:*
- 112 *1. An employee of a duly licensed common interest community manager from providing*
113 *management services under the supervision of a duly licensed common interest community*
114 *manager;*
- 115 *2. An employee of an association from providing management services for that association's*
116 *common interest community;*
- 117 *3. A resident of a common interest community acting without compensation from providing*
118 *management services for that common interest community;*
- 119 *4. A member of the governing board of an association acting without compensation from*
120 *providing management services for that association's common interest community;*
- 121 *5. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as*
122 *such, or any person acting under order of any court from providing management services for a*
123 *common interest community;*
- 124 *6. A duly licensed attorney-at-law from representing an association or a common interest*
125 *community manager in any business that constitutes the practice of law;*
- 126 *7. A duly licensed certified public accountant from providing bookkeeping or accounting*
127 *services to an association or a common interest community manager; or*
- 128 *8. A duly licensed real estate broker or agent from selling, leasing, renting or managing lots*
129 *within a common interest community.*
- 130 *B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact*
131 *that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this*
132 *subsection shall be construed to require a person to be licensed in accordance with this chapter*
133 *if he would be otherwise exempt from such licensure.*

134 *§ 54.1-2348. Common Interest Community Board; membership; meetings; quorum.*

135 *The Common Interest Community Board shall be appointed by the Governor and composed of*
136 *seven members as follows: three shall be representatives of a Virginia common interest*
137 *community manager, one shall be a Virginia attorney whose practice includes the representation*
138 *of associations, one shall be a representative of a Virginia certified public accountant whose*
139 *practice includes providing attest services to associations, two shall be Virginia citizens, one of*
140 *whom serves or who has served on the governing board of an association or who resides or has*
141 *resided in a common interest community. Of the initial appointments, one representative of a*
142 *Virginia common interest community manager shall serve a term of two years and one*
143 *representative of a Virginia common interest community manager shall serve a term of three*
144 *years; the Virginia attorney shall serve a term of three years; the Virginia certified public*
145 *accountant shall serve a term of one year, the Virginia citizen who serves or who has served on*

146 the governing board of an association or who resides or has resided in a common interest
147 community shall serve a term of two years, and the other Virginia citizen shall serve a term of
148 one year. All other initial appointments and all subsequent appointments shall be for terms for
149 four years, except that vacancies may be filled for the remainder of the unexpired term. Each
150 appointment of a representative of a Virginia common interest community manager to the Board
151 may be made from nominations submitted by the Virginia Association of Community Managers,
152 who may nominate no more than three persons for each manager vacancy. In no case shall the
153 Governor be bound to make any appointment from such nominees. No person shall be eligible to
154 serve for more than two successive four-year terms.

155 The Board shall meet at least four times each year and other such times as it deems necessary.
156 The Board shall elect from its membership a chairman and a vice-chairman to serve for a period
157 of one year. Four members of the Board shall constitute a quorum. The Board is vested with the
158 powers and duties necessary to execute the purposes of this chapter.

159 § 54.1-2349. Powers and duties of the Board.

160 A. The Board shall administer and enforce this chapter. In addition to the provisions of § 54.1-
161 201, the Board shall:

162 1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance
163 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be
164 limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of
165 common interest community manager licenses. The Board shall annually assess each common
166 interest community manager an amount equal to the lesser of \$1,000 (or such other amount as
167 the Board may establish by regulation) or .02% of its gross receipts from common interest
168 community management during the preceding calendar, to be remitted to the State Treasurer and
169 shall be placed to the credit of the Common Interest Community Management Information Fund
170 established pursuant to § 55-529.

171 2. Establish criteria for the licensure of common interest community managers to ensure the
172 appropriate training and educational credentials for the provision of management services to
173 common interest communities. Such criteria may include experiential requirements and shall
174 include designation as an Accredited Association Management Company by the Community
175 Association Institute. As an additional alternative to such designation, the Board shall have
176 authority, by regulation, to include one of the following: (i) successful completion of another
177 Board-approved training program and certifying examination, or (ii) successful completion of a
178 Virginia testing program to determine the quality of the training and educational credentials for
179 and competence of common interest community managers.

180 3. Establish criteria for the certification of the employees of common interest community
181 managers who participate directly in the provision of management services to a common interest
182 community to ensure the person possesses the character and minimum skills to engage properly
183 in the provision of management services to a common interest community. Such criteria shall
184 include designation as a Certified Manager of Community Associations by the National Board
185 for Certification of Community Association Managers, designation as an Association

186 *Management Specialist by the Community Association Institute, or designation as a*
187 *Professional Community Association Manager by the Community Association Institute. As an*
188 *additional alternative to such designations, the Board shall have authority, by regulation, to*
189 *include one of the following: (i) successful completion of another Board-approved training*
190 *program and certifying examination, or (ii) successful completion of a Virginia testing program*
191 *to determine the quality of the training and educational credentials for and competence of the*
192 *employees of common interest community managers who participate directly in the provision of*
193 *management services to a common interest community. The fee paid to the Board for the*
194 *issuance of such certificate shall be paid to the Common Interest Community Management*
195 *Information Fund.*

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

197 *5. Approve accredited common interest community manager training programs;*

198 *6. Establish, by regulation, standards of conduct for common interest community managers and*
199 *for employees of common interest community managers certified in accordance with the*
200 *provisions of this chapter.*

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

205 *B. The Board is authorized to obtain criminal history record information from any state or*
206 *federal law-enforcement agency relating to an applicant for licensure or certification. Any*
207 *information so obtained is for the exclusive use of the Board and shall not be released to any*
208 *other person or agency except in furtherance of the investigation of the applicant or with the*
209 *authorization of the applicant or upon court order.*

210 *§ 54.1-2350. In addition to the provisions of § 54.1-2349, the Board shall:*

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

212 *2. Develop and disseminate an association annual report form for use in accordance with §§ 55-*
213 *79.93:1, 55-504.1, and 55-516.1;*

214 *3. Develop and disseminate a one-page form to accompany association disclosure packets*
215 *required pursuant to § 55-512, which form shall summarize the unique characteristics of*
216 *property owners' associations generally and shall make known to prospective purchasers the*
217 *unusual and material circumstances affecting a lot owner in a property owners' association,*
218 *including, but not limited to, the obligation of a lot owner to pay regular annual or special*
219 *assessments to the association, and the penalty for failure or refusal to pay such assessments; the*
220 *purposes for which such assessments may be used; and the importance the declaration of*
221 *restrictive covenants and other governing documents play in association living.*

222 § 54.1-2351. *General powers and duties of board concerning associations.*

223 A. *The board may adopt, amend and repeal rules and regulations and issue orders consistent*
224 *with and in furtherance of the objectives of this chapter, but the board may not intervene in the*
225 *internal activities of an association except to the extent necessary to prevent or cure violations of*
226 *this chapter or of the chapter pursuant to which the association is created. The board may*
227 *prescribe forms and procedures for submitting information to the board.*

228 B. *If it appears that any person has engaged, is engaging or is about to engage in any act or*
229 *practice in violation of this chapter, chapters 4.2, 21, 24 or 26 of title 55, or any of the board's*
230 *regulations or orders, the board without prior administrative proceedings may bring suit in the*
231 *appropriate court to enjoin that act or practice or for other appropriate relief. The board is not*
232 *required to post a bond or prove that no adequate remedy at law exists.*

233 C. *The board may intervene in any action or suit involving the powers or responsibilities of a*
234 *declarant or the governing board of an association in connection with any association for which*
235 *an application for registration is on file.*

236 D. *The board may accept grants-in-aid from any governmental source and may contract with*
237 *agencies charged with similar functions in this or other jurisdictions in furtherance of the*
238 *objectives of this chapter.*

239 E. *The board may cooperate with agencies performing similar functions in this and other*
240 *jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards and*
241 *uniform administrative practices, and may develop information that may be useful in the*
242 *discharge of the board's duties.*

243 F. *In issuing any cease and desist order or order rejecting or revoking registration of an*
244 *association, the board shall state the basis for the adverse determination and the underlying*
245 *facts.*

246 G. *Without limiting the remedies which may be obtained under this chapter, the board, without*
247 *compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to*
248 *enforce the provisions of this section and may institute proceedings in equity to enjoin any*
249 *person, partnership, corporation or any other entity from engaging in any unlawful act*
250 *enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth*
251 *by the board in the circuit court or general district court of the city or county in which the*
252 *unlawful act occurred or in which the defendant resides.*

253 H. *The board may assess a civil penalty to be paid to the Common Interest Community*
254 *Information Fund of not more than \$1,000 against any person who violates any provision of this*
255 *section. In determining the amount of the penalty, the board shall consider the degree and extent*
256 *of harm caused by the violation. No civil penalty may be assessed under this section unless the*
257 *person has been given the opportunity for a hearing pursuant to the Administrative Process Act,*
258 *(§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the*
259 *Commonwealth.*

260 § 54.1-2352. *Investigative powers of board.*

261 A. The board may initiate public or private investigations within or outside this Commonwealth
262 to determine whether any representation in any document or information filed with the board is
263 false or misleading or whether any person has engaged, is engaging or is about to engage in any
264 unlawful act or practice.

265 B. In the course of any investigation or hearing, the board may subpoena witnesses and
266 documents, administer oaths and affirmations and adduce evidence. If a person fails to comply
267 with a subpoena or to answer questions propounded during the investigation or hearing, the
268 board may apply to the appropriate court for a contempt order or injunctive or other
269 appropriate relief to secure compliance.

270 § 54.1-2353. Cease and desist orders.

271 (a) If the board determines after notice and hearing that the governing board of an association
272 has:

273 1. Violated any statute or regulation governing the association regulated pursuant to this
274 chapter, including engaging in any act or practice in violation of this chapter, chapters 4.2, 21,
275 24 or 26 of title 55, or any of the board's regulations or orders.

276 2. Failed to register as an association or to file an annual report as required by statute or
277 regulation.

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

279 4. Willfully refused to furnish the board information or records required or requested pursuant
280 to statute or regulation.

281 it may issue an order requiring the governing board of the association to cease and desist from
282 the unlawful practice and to take such affirmative action as in the judgment of the agency will
283 carry out the purposes of this chapter.

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

290 §54.1-2354. Protection of the interests of associations; appointment of receiver for common
291 interest community manager.

292 A. A common interest community manager owes a fiduciary duty to the associations to which it
293 provides management services with respect to the manager's handling the funds or the records
294 of each association. All funds deposited with the common interest community manager shall be
295 handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or
296 accounts in an FDIC-insured financial institution separate from the assets of the common
297 interest community manager. The funds shall be the property of the association and shall be

298 segregated for each depository in the records of the common interest community manager in a
299 manner that permits the funds to be identified on an association basis. All records having
300 administrative or fiscal value to the association that a common interest community manager
301 holds, maintains, compiles or generates on behalf of a common interest community are the
302 property of the association. A common interest community manager may retain and dispose of
303 association records in accordance with a policy contained in the contract between the common
304 interest community manager and the association. Within a reasonable time after a written
305 request for any such records, the common interest community manager shall provide copies of
306 the requested records to the association at the association's expense. The common interest
307 community manager shall return all association records that it retains and any originals of legal
308 instruments or official documents which are in the possession of the common interest community
309 manager to the association within a reasonable time after termination of the contract for
310 management services without additional cost to the association. Records maintained in
311 electronic format may be returned in such format.

312 B. If the Director has reasonable cause to believe that a common interest community manager is
313 unable to properly discharge its fiduciary responsibilities to an association to which it provides
314 management services, the Director may submit an ex parte petition to the circuit court of the city
315 or county wherein the common interest community manager maintains an office or is doing
316 business for the issuance of an order authorizing the immediate inspection by and production to
317 representatives of the petitioner of any records, documents, and physical or other evidence
318 belonging to the subject common interest community manager. The court may issue such order
319 without notice to the common interest community manager if the petition, supported by affidavit
320 of the petitioner and such other evidence as the court may require, shows reasonable cause to
321 believe that such action is required to prevent immediate loss of property of one or more of the
322 associations to which the subject common interest community manager provides management
323 services. The court may also temporarily enjoin further activity by the common interest
324 community manager and take such further action as shall be necessary to conserve, protect and
325 disburse the funds involved, including the appointment of a receiver. The papers filed with the
326 court pursuant to this subsection shall be placed under seal.

327 C. If the Director has reasonable cause to believe that a common interest community manager is
328 unable to properly discharge its fiduciary responsibilities to an association to which it provides
329 management services, the Director may file a petition with the circuit court of the county or city
330 wherein the subject common interest community manager maintains an office or is doing
331 business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal
332 of any bank deposits or the disposition of any other assets belonging to or subject to the control
333 of the subject common interest community manager; and (ii) the appointment of a receiver for all
334 or part of the funds or property of the subject common interest community manager. The subject
335 common interest community manager shall be given notice of the time and place of the hearing
336 on the petition and an opportunity to offer evidence. The court, in its discretion, may require a
337 receiver appointed pursuant to this section to post bond, with or without surety. The papers filed
338 with the court under this subsection shall be placed under seal until such time as the court grants
339 an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver or
340 provide such other relief as the court may consider proper if, after a hearing, the court finds that
341 such relief is necessary or appropriate to prevent loss of property of one or more of the

342 associations to which the subject common interest community manager provides management
343 services.

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

349 *E. The court shall describe the powers and duties of the receiver in its appointing order,*
350 *which may be amended from time to time. The receiver shall, unless otherwise ordered by the*
351 *court in the appointing order, (i) prepare and file with the Director a list of all associations*
352 *managed by the subject common interest community manager; (ii) notify in writing all of the*
353 *associations to which the subject common interest community manager provides management*
354 *services of the appointment, and take whatever action the receiver deems appropriate to protect*
355 *the interests of the associations until such time as the associations have had an opportunity to*
356 *obtain a successor common interest community manager; (iii) facilitate the transfer of records*
357 *and information to such successor common interest community managers; (iv) identify and take*
358 *control of all bank accounts, including without limitation trust and operating accounts, over*
359 *which the subject common interest community manager had signatory authority in connection*
360 *with its management business; (v) prepare and submit an accounting of receipts and*
361 *disbursements and account balances of all funds under the receiver's control for submission to*
362 *the court within four months of the appointment and annually thereafter until the receivership is*
363 *terminated by the court; (vi) attempt to collect any accounts receivable related to the*
364 *subject common interest community manager's business; (vii) identify and attempt to recover any*
365 *assets wrongfully diverted from the subject common interest community manager's business, or*
366 *assets acquired with funds wrongfully diverted from the subject common interest community*
367 *manager's business; (viii) terminate the subject common interest community manager's business;*
368 *(ix) reduce to cash all of the assets of the subject common interest community manager; (x)*
369 *determine the nature and amount of all claims of creditors of the subject common interest*
370 *community manager, including associations to which the subject common interest community*
371 *manager provided management services; and (x) prepare and file with the court a report of such*
372 *assets and claims proposing a plan for the distribution of funds in the receivership to such*
373 *creditors in accordance with the provisions of subsection F hereof.*

374 *F. Upon the Court's approval of the receiver's report referenced in subsection E hereof, at a*
375 *hearing after such notice as the Court may require to creditors, the receiver shall distribute the*
376 *assets of the common interest community manager and funds in the receivership first to clients*
377 *whose funds were or ought to have been held in a fiduciary capacity by the subject common*
378 *interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant*
379 *to subsection H, and thereafter to the creditors of the subject common interest community*
380 *manager, and then to the subject common interest community manager or its successors in*
381 *interest.*

382 *G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the*
383 *court in which the appointment was made, to recover an award of reasonable fees, costs, and*
384 *expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall*

385 shall be paid by the Common Interest Community Management Information Fund as a cost of
386 administering the Fund pursuant to § 55-530, to the extent that the said Fund has funds
387 available. The Fund shall have a claim against the subject common interest community manager
388 for the amount paid.

389 H. The court may determine whether any assets under the receiver's should be returned to the
390 subject common interest community manager.

391 I. If the Director shall find that any common interest community manager is insolvent, that its
392 merger into another common interest community manager is desirable for the protection of the
393 associations to which such common interest community manager provides management services
394 and that an emergency exists, and, if the board of directors of such insolvent common interest
395 community manager shall approve a plan of merger of such common interest community
396 manager into another common interest community manager, compliance with the requirements
397 of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager
398 and the approval by the Director of such plan of merger shall be the equivalent of approval by
399 the holders of more than two-thirds of the outstanding shares of such insolvent common interest
400 community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title
401 13.1. If the Director finds that a common interest community manager is insolvent, that the
402 acquisition of its assets by another common interest community manager is in the best interests
403 of the associations to which such common interest community manager provides management
404 services and that an emergency exists, it may, with the consent of the boards of directors of both
405 common interest community managers as to the terms and conditions of such transfer, including
406 the assumption of all or certain liabilities, enter an order transferring some or all of the assets of
407 such insolvent common interest community manager to such other common interest community
408 manager and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required,
409 nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such
410 a merger or of such a sale of assets, the Director shall provide that prompt notice of its finding
411 of insolvency and of the merger or sale of assets be sent to the stockholders of record of the
412 insolvent common interest community manager for the purpose of providing such shareholders
413 an opportunity to challenge the finding that the bank is insolvent. The relevant books and
414 records of such insolvent common interest community manager shall remain intact and be made
415 available to such shareholders for a period of 30 days after such notice is sent. The Director's
416 finding of insolvency shall become final if a hearing before the Board is not requested by any
417 such shareholder within such 30-day period. If, after such hearing, the Board finds that such
418 common interest community manager was solvent, it shall rescind the Director's order entered
419 pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after
420 such hearing, the Board finds that such common interest community manager was insolvent, its
421 order shall be final.

422 J. This statute is declared to be remedial. Its purpose is to protect the interests of associations
423 adversely affected by common interest community managers who have breached their fiduciary
424 duty. It is to be liberally administered in order to protect those interests and thereby the public's
425 interest in the quality of management services provided by Virginia common interest community
426 managers.

427 § 54.1-2355. Variation by Agreement.

428 *Except as expressly provided in this chapter, provisions of this chapter may not be varied by*
429 *agreement, and rights conferred by this chapter may not be waived. All management agreements*
430 *entered into by common interest community managers must comply with the terms of this chapter*
431 *and the provisions of Chapter 4.2 of Title 55, Chapter 24 of Title 55, or the provisions of*
432 *Chapter 26 of Title 55, as applicable.*

433 § 55-79.41. Definitions.

434 When used in this chapter:

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

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

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

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

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

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

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

461 "Conversion condominium" means a condominium containing structures which before the
462 recording of the declaration, were wholly or partially occupied by persons other than those who

463 have contracted for the purchase of condominium units and those who occupy with the consent
464 of such purchasers.

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

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

472 "Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of
473 his or its interest in a condominium unit not previously disposed of, including an institutional
474 lender which may not have succeeded to or accepted any special declarant rights pursuant to §
475 55-79.74:3; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration
476 of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall
477 not include an institutional lender which acquires title by foreclosure or deed in lieu thereof
478 unless such lender offers to dispose of its interest in a condominium unit not previously disposed
479 of to anyone not in the business of selling real estate for his own account, except as otherwise
480 provided in § 55-79.74:3. The term "declarant" shall not include an individual who acquires title
481 to a condominium unit at a foreclosure sale.

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

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

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

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

495 "Future common expenses" means common expenses for which assessments are not yet due and
496 payable.

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

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

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

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

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

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

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

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

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

535 "Par value" means a number of dollars or points assigned to each unit by the declaration.
536 Substantially identical units shall be assigned the same par value, but units located at

537 substantially different heights above the ground, or having substantially different views, or
538 having substantially different amenities or other characteristics that might result in differences in
539 market value, may, but need not, be considered substantially identical within the meaning of this
540 subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect
541 or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair
542 market transaction at a different figure shall affect the par value of any unit, or any undivided
543 interest in the common elements, voting rights in the unit owners' association or liability for
544 common expenses assigned on the basis thereof.

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

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

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

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

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

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

571 § 55-79.58. Contents of plats and plans.

572 A. There shall be recorded simultaneously with the declaration one or more plats of survey
573 showing the location and dimensions of the submitted land, the location and dimensions of any
574 convertible lands within the submitted land, the location and dimensions of any existing

575 improvements, the intended location and dimensions of any contemplated improvements which
576 are to be located on any portion of the submitted land other than within the boundaries of any
577 convertible lands, and, to the extent feasible, the location and dimensions of all easements
578 appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common
579 elements. If the submitted land is not contiguous, then the plats shall indicate the distances
580 between the parcels constituting the submitted land. The plats shall label every convertible land
581 as a convertible land, and if there is more than one such land the plats shall label each such land
582 with one or more letters and/or numbers different from those designating any other convertible
583 land and different also from the identifying number of any unit. The plats shall show the location
584 and dimensions of any withdrawable lands, and shall label each such land as a withdrawable
585 land. The plats shall show the location and dimensions of any additional lands and shall label
586 each such land as an additional land. If, with respect to any portion or portions, but less than all,
587 of the submitted land, the unit owners are to own only an estate for years, the plats shall show the
588 location and dimensions of any such portions, and shall label each such portion as a leased land.
589 If there is more than one withdrawable land, or more than one leased land, the plats shall label
590 each such land with one or more letters and/or numbers different from those designating any
591 convertible land or other withdrawable or leased land, and different also from the identifying
592 number of any unit. The plats shall show all easements to which the submitted land or any
593 portion thereof is subject, and shall show the location and dimensions of all such easements to
594 the extent feasible. The plats shall also show all encroachments by or on any portion of the
595 condominium. In the case of any improvements located or to be located on any portion of the
596 submitted land other than within the boundaries of any convertible lands, the plats shall indicate
597 which, if any, have not been begun by the use of the phrase "(NOT YET BEGUN)," and which,
598 if any, have been begun but have not been substantially completed by the use of the phrase
599 "(NOT YET COMPLETED)." In the case of any units the vertical boundaries of which lie
600 wholly or partially outside of structures for which plans pursuant to subsection B are
601 simultaneously recorded, the plats shall show the location and dimensions of such vertical
602 boundaries to the extent that they are not shown on such plans, and the units or portions thereof
603 thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded
604 document as to its accuracy and compliance with the provisions of this subsection by a licensed
605 land surveyor, and the said surveyor shall certify in such document or on the face of the plat that
606 all units or portions thereof depicted thereon pursuant to the preceding sentence of this
607 subsection have been substantially completed. The specification within this subsection of items
608 that shall be shown on the plats shall not be construed to mean that the plats shall not also show
609 all other items customarily shown or hereafter required for land title surveys.

610 B. There shall also be recorded, simultaneously with the declaration, plans of every structure
611 which contains or constitutes all or part of any unit or units, and which is located on any portion
612 of the submitted land other than within the boundaries of any convertible lands. The plans shall
613 show the location and dimensions of the vertical boundaries of each unit to the extent that such
614 boundaries lie within or coincide with the boundaries of such structures, and the units or portions
615 thereof thus depicted shall bear their identifying numbers. In addition, each convertible space
616 thus depicted shall be labelled a convertible space. The horizontal boundaries of each unit having
617 horizontal boundaries shall be identified on the plans with reference to established datum. Unless
618 the condominium instruments expressly provide otherwise, it shall be presumed that in the case
619 of any unit not wholly contained within or constituting one or more such structures, the

620 horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation
621 with regard to any part of such unit, lying outside of such structures, subject to the following
622 exception: In the case of any such unit which does not lie over any other unit other than
623 basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at
624 the level of the ground with regard to any part of that unit lying outside of such structures. The
625 plans shall be certified on their face or in another recorded document as to their accuracy and
626 compliance with the provisions of this subsection by a licensed architect, licensed engineer or
627 licensed land surveyor, and the said architect, engineer or land surveyor shall certify on the plans
628 or in the recorded document that all units or portions thereof depicted thereon have been
629 substantially completed.

630 C. When converting all or any portion of any convertible land, or adding additional land to an
631 expandable condominium, the declarant shall record, with regard to any structures on the land
632 being converted, or added, either plats of survey conforming to the requirements of subsection A
633 and plans conforming to the requirements of subsection B, or certifications, conforming to the
634 certification requirements of said subsections, of plats and plans previously recorded pursuant to
635 § 55-79.59.

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

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

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

657 § 55-79.58:1. Bond to insure completion of improvements.

658 A. The declarant shall file with the ~~Real Estate Board~~ *Common Interest Community Board* a
659 bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion,

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

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

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

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

678 § 55-79.74. Control of condominium by declarant.

679 A. The condominium instruments may authorize the declarant, or a managing agent or some
680 other person or persons selected or to be selected by the declarant, to appoint and remove some
681 or all of the officers of the unit owners' association and/or its executive organ, or to exercise
682 powers and responsibilities otherwise assigned by the condominium instruments and by this
683 chapter to the unit owners' association, the officers, or the executive organ. The declarant or the
684 managing agent or such other person or persons selected by the declarant to so appoint and
685 remove officers and/or the executive organ or to exercise such powers and responsibilities
686 otherwise assigned to the unit owners' association, the officers, or the executive organ shall be
687 subject to liability as fiduciaries of the unit owners for their action or omissions during the period
688 of declarant control as specified in the condominium instruments or if not so specified, within
689 such period as defined in this section. But no amendment to the condominium instruments shall
690 increase the scope of such authorization if there is any unit owner other than the declarant, and
691 no such authorization shall be valid after the time limit set by the condominium instruments or
692 after units to which three-fourths of the undivided interests in the common elements appertain
693 have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the
694 calculation of the fraction of undivided interest shall be based upon the total undivided interests
695 assigned or to be assigned to all units registered with the ~~Real Estate Board~~ *Common Interest*
696 *Community Board* pursuant to subsection B of § 55-79.92 hereof and described pursuant to
697 subdivision (4) of subsection (a), subdivision (2) of subsection (b), or subdivision (8) of
698 subsection (c), of § 55-79.54. The time limit initially set by the condominium instruments shall
699 not exceed five years in the case of an expandable condominium, three years in the case of a
700 condominium (other than an expandable condominium) containing any convertible land, or two

701 years in the case of any other condominium. Such time period shall commence upon settlement
702 of the first unit to be sold in any portion of the condominium.

703 B. If entered into any time prior to the expiration of the period of declarant control contemplated
704 by subsection A hereof, no contract or lease entered into with the declarant or any entity
705 controlled by the declarant, management contract, employment contract or lease of recreational
706 or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit
707 owners' association, its executive organ, or the unit owners as a group, shall be entered into for a
708 period in excess of two years. Any such contract or agreement entered into on or after July 1,
709 1978, may be terminated without penalty by the unit owners' association or its executive organ
710 upon not less than ninety days' written notice to the other party given not later than sixty days
711 after the expiration of the period of declarant control contemplated by subsection A hereof. Any
712 such contract or agreement may be renewed for periods not in excess of two years; however, at
713 the end of any two-year period the unit owners' association or its executive organ may terminate
714 any further renewals or extensions thereof. The provisions of this subsection shall not apply to
715 any lease or leases which are referred to in § 55-79.48 or which are subject to subsection (e) of §
716 55-79.54.

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

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

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

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

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

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

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

760 § 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations
761 for warranty.

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

775 B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or
776 guarantee, against structural defects, each of the units for two years from the date each is
777 conveyed, and all of the common elements for two years. In the case of each unit the declarant
778 shall also warrant that the unit is fit for habitation and constructed in a workmanlike manner so
779 as to pass without objection in the trade. The two years referred to in this subsection shall begin
780 as to each of the common elements whenever the same has been completed or, if later, (i) as to

781 any common element within any additional land or portion thereof, at the time the first unit
782 therein is conveyed, (ii) as to any common element within any convertible land or portion
783 thereof, at the time the first unit therein is conveyed, and (iii) as to any common element within
784 any other portion of the condominium, at the time the first unit therein is conveyed. For the
785 purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide
786 purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the
787 declarant's warranties against structural defects imposed by this subsection. For the purposes of
788 this subsection, structural defects shall be those defects in components constituting any unit or
789 common element which reduce the stability or safety of the structure below accepted standards
790 or restrict the normal intended use of all or part of the structure and which require repair,
791 renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the
792 declarant responsible for any items of maintenance relating to the units or common elements.

793 C. An action for breach of any warranty prescribed by this section shall be commenced within
794 five years after the date such warranty period began. However, no such action shall be
795 maintained against the declarant unless a written statement by the claimant or his agent, attorney
796 or representative, of the nature of the alleged defect has been sent to the declarant, by registered
797 or certified mail, at his last known address, as reflected in the records of the ~~Real Estate Board~~
798 *Common Interest Community Board*, more than six months prior to the commencement of the
799 action giving the declarant an opportunity to cure the alleged defect within a reasonable time.
800 Sending the notice required by this subsection shall toll the statute of limitations for commencing
801 a breach of warranty action for a period not to exceed six months.

802 § 55-79.81. Insurance.

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

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

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

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

817 B. Any unit owners' association collecting assessments for common expenses shall obtain and
818 maintain a blanket fidelity bond or employee dishonesty insurance policy ~~covering~~ *insuring the*
819 *unit owners' association against losses resulting from theft or dishonesty committed by the*

820 officers, directors, and or persons employed by the unit owners' association, and or committed by
821 any managing agent and or employees of the managing agent. Such bond or insurance policy
822 shall provide a minimum of \$10,000 in coverage in an amount equal to the lesser of \$1,000,000
823 or the amount of the reserve balances of the unit owners' association and three times the monthly
824 assessments of such unit owners' association. The minimum coverage amount shall be \$10,000.
825 The executive organ or managing agent may obtain such bond or insurance on behalf of the unit
826 owners' association.

827 C. When any policy of insurance has been obtained by or on behalf of the unit owners'
828 association, written notice of the obtainment thereof and of any subsequent changes therein or
829 termination thereof shall be promptly furnished to each unit owner by the officer required to send
830 notices of meetings of the unit owners' association. Such notices shall be sent in accordance with
831 the provisions of subsection A of § 55-79.75.

832 § 55-79.84:1. Bond to be posted by declarant.

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

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

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

850 § 55-79.86. Administrative agency.

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

853 § 55-79.89. Application for registration; fee.

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

- 856 1. An irrevocable appointment of the agency to receive service of any lawful process in any
857 noncriminal proceeding arising under this chapter against the applicant or his personal
858 representative;
- 859 2. The states or jurisdictions in which an application for registration or similar document has
860 been filed, and any adverse order, judgment, or decree entered in connection with the
861 condominium by the regulatory authorities in each jurisdiction or by any court;
- 862 3. The applicant's name, address, and the form, date, and jurisdiction or organization; and the
863 address of each of its offices in this Commonwealth;
- 864 4. The name, address, and principal occupation for the past five years of every officer of the
865 applicant or person occupying a similar status or performing similar functions; the extent and
866 nature of his interest in the applicant or the condominium as of a specified date within thirty days
867 of the filing of the application;
- 868 5. A statement, in a form acceptable to the agency, of the condition of the title to the
869 condominium project including encumbrances as of a specified date within thirty days of the date
870 of application by a title opinion of a licensed attorney, not a salaried employee, officer or director
871 of the applicant or owner, or by other evidence of title acceptable to the agency;
- 872 6. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the
873 unit and of the contracts and other agreements which a purchaser will be required to agree to or
874 sign;
- 875 7. Copies of any management agreements, employment contracts or other contracts or
876 agreements affecting the use, maintenance or access of all or a part of the condominium;
- 877 8. A statement of the zoning and other governmental regulations affecting the use of the
878 condominium, including the site plans and building permits and their status, and also of any
879 existing tax and existing or proposed special taxes or assessments which affect the
880 condominium;
- 881 9. A narrative description of the promotional plan for the disposition of the units in the
882 condominium;
- 883 10. Plats and plans of the condominium that comply with the provisions of § 55-79.58 other than
884 the certification requirements thereof, and which show all units and buildings containing units to
885 be built anywhere within the submitted land other than within the boundaries of any convertible
886 lands, except that the agency may establish by regulation or order requirements in lieu of the
887 provisions of § 55-79.58 for plats and plans of a condominium located outside this
888 Commonwealth;
- 889 11. The proposed public offering statement;
- 890 12. Any bonds required to be posted pursuant to the provisions of this chapter; and

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

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

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

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

903 § 55-79.93:1. Annual report by unit owners' association.

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

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

910 C. The annual report shall be accompanied by a fixed fee in an amount established by the
911 agency, *together with an annual assessment in an amount equal to the lesser of \$1,000 (or such*
912 *other amount as the agency may establish by regulation) or .02% of the association's gross*
913 *assessment income during the preceding calendar year*. All fees shall be remitted to the State
914 Treasurer and shall be placed to the credit of the Common Interest Community Management
915 Information Fund established pursuant to § 55-529.

916 § 55-79.95. Escrow of deposits.

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

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

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

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

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

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

940 1. \$75,000 or less, the blanket bond shall be \$75,000;

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

942 3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;

943 4. \$500,000 or more but less than \$1,000,000, the blanket bond shall be \$1,000,000; and

944 5. \$1,000,000 or more, the blanket bond shall be 100 percent of the amount of such deposits.

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

952 1. \$75,000 or less, the blanket letter of credit shall be \$75,000;

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

954 3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;

955 4. \$500,000 or more but less than \$1,000,000, the blanket letter of credit shall be \$1,000,000;
956 and

957 5. \$1,000,000 or more, the blanket letter of credit shall be 100 percent of the amount of such
958 deposits.

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

963 § 55-79.97. Resale by purchaser.

964 A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and
965 subject to the provisions of subsection J and § 55-79.87 A, the unit owner shall disclose in the
966 contract that (i) the unit is located within a development which is subject to the Condominium
967 Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate
968 and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after
969 receiving the resale certificate, (iv) the purchaser has a right to request an update of the resale
970 certificate in accordance with subsection D, and (v) the right to receive the resale certificate and
971 the right to cancel the contract are waived conclusively if not exercised before settlement.

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

974 C. The information contained in the resale certificate shall be current as of a date specified on the
975 resale certificate. The purchaser may cancel the contract (i) within three days after the date of the
976 contract, if the purchaser receives the resale certificate on or before the date that the purchaser
977 signs the contract; (ii) within three days after receiving the resale certificate if the resale
978 certificate is hand delivered or delivered by electronic means and a receipt obtained; or (iii)
979 within six days after the postmark date if the resale certificate is sent to the purchaser by United
980 States mail. Notice of cancellation shall be provided to the unit owner or his agent by one of the
981 following methods:

982 a. Hand delivery;

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

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

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

990 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice
991 of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any
992 deposit to be returned promptly to the purchaser. The unit owners' association may also send the

- 993 resale certificate by electronic means unless either the seller or the purchaser requests a paper
994 certificate.
- 995 A resale certificate shall include the following:
- 996 1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized
997 and, if applicable, an appropriate statement pursuant to § 55-79.85;
 - 998 2. A statement of any expenditure of funds approved by the unit owners' association or the
999 executive organ which shall require an assessment in addition to the regular assessment during
1000 the current or the immediately succeeding fiscal year;
 - 1001 3. A statement, including the amount, of all assessments and any other fees or charges currently
1002 imposed by the unit owners' association and associated with the purchase, disposition and
1003 maintenance of the condominium unit and the use of the common elements, and the status of the
1004 account;
 - 1005 4. A statement whether there is any other entity or facility to which the unit owner may be liable
1006 for fees or other charges;
 - 1007 5. The current reserve study report or a summary thereof, a statement of the status and amount of
1008 any reserve or replacement fund and any portion of the fund designated for any specified project
1009 by the executive organ;
 - 1010 6. A copy of the unit owners' association's current budget or a summary thereof prepared by the
1011 unit owners' association and a copy of the statement of its financial condition for the last fiscal
1012 year for which a statement is available, including a statement of the balance due of any
1013 outstanding loans of the unit owners' association;
 - 1014 7. A statement of the nature and status of any pending suits or unpaid judgments to which the
1015 unit owners' association is a party which either could or would have a material impact on the
1016 association or the unit owners or which relates to the unit being purchased;
 - 1017 8. A statement setting forth what insurance coverage is provided for all unit owners by the unit
1018 owners' association, including any fidelity bond maintained by the unit owners' association, and
1019 what additional insurance coverage would normally be secured by each individual unit owner;
 - 1020 9. A statement that any improvements or alterations made to the unit, or the limited common
1021 elements assigned thereto, by the prior unit owner are not in violation of the condominium
1022 instruments;
 - 1023 10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by
1024 the unit owners' association and the amendments thereto;

1025 11. A statement of whether the condominium or any portion thereof is located within a
1026 development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of
1027 this title;

1028 12. A copy of the notice given to the unit owner by the unit owners' association of any current or
1029 pending rule or architectural violation;

1030 13. Certification, if applicable, that the association has filed with the ~~Real Estate Board~~ *Common*
1031 *Interest Community Board* the annual report required by § 55-79.93:1; which certification shall
1032 indicate the filing number assigned by the ~~Real Estate Board~~ *Common Interest Community*
1033 *Board* and the expiration date of such filing;

1034 14. A statement of any limitation on the number of persons who may occupy a unit as a
1035 dwelling; and

1036 15. A statement setting forth any restrictions, limitation or prohibition on the right of a unit
1037 owner to display the flag of the United States, including, but not limited to reasonable
1038 restrictions as to the size, time, place, and manner of placement or display of such flag.

1039 Failure to receive copies of such documents shall not excuse any failure to comply with the
1040 provisions thereof.

1041 The resale certificate, once received by the owner from the unit owners' association, shall be
1042 delivered by the owner to the purchaser. The unit owners' association shall have no obligation to
1043 deliver the resale certificate to the purchaser of the unit. The resale certificate shall not, in and of
1044 itself, be deemed a security within the meaning of § 13.1-501.

1045 D. The purchaser may submit a copy of the contract to the unit owners' association with a request
1046 for assurance that statements previously furnished pursuant to subsection C remain materially
1047 unchanged, or, if there have been material changes, a statement specifying such changes. The
1048 purchaser shall be provided with such assurances or such statement within ten days of the receipt
1049 of such request by the unit owners' association. The purchaser may be required to pay the same
1050 fee charged a unit owner for the resale certificate, if any. Any fee shall reflect the actual cost
1051 incurred by the unit owners' association in providing the assurances, but shall not exceed \$0.10
1052 per page in copying costs or a total of \$50 for all costs incurred in updating the resale certificate.
1053 The unit owners' association may also collect from the purchaser the actual costs incurred of any
1054 mailing or delivery requested by the purchaser pursuant to this subsection. In no event, however,
1055 shall the unit owners' association require reimbursement of any costs not expressly authorized in
1056 this subsection. Nor shall the unit owners' association charge any other fee for the preparation or
1057 issuance of such resale certificate or making such certificate available by electronic means
1058 except as expressly provided in this subsection.

1059 E. In the absence of a written agreement to the contrary, the failure of the unit owners'
1060 association to provide the statement required by subsection D or the disclosure by such statement
1061 that there have been one or more material changes shall render the purchase contract void at the
1062 option of the purchaser.

1063 F. The unit owners' association shall furnish the resale certificate upon the written request of any
1064 unit owner within 14 days of the receipt of such request. *Except as provided in this subsection,*
1065 ~~payment~~ Payment of the actual costs of preparing the resale certificate may be required of the
1066 unit owner requesting it as a prerequisite to its issuance, but the total fee shall not exceed \$0.10
1067 per page in copying costs or a total of \$100, including and not in addition to, any fee charged
1068 pursuant to subsection H of § 55-79.84 and § 55-79.85, for all costs incurred in preparing the
1069 resale certificate. However, the unit owners' association may:

1070 1. Upon mutual agreement with the seller, collect for actual costs incurred, in addition to any fee
1071 charged pursuant to this subsection:

1072 a. A rush fee, not to exceed \$25, for furnishing the resale certificate within three business days
1073 from the actual receipt of the request;

1074 b. The actual cost of any mailing or delivery requested by the seller pursuant to this subsection;
1075 and

1076 c. Any actual cost incurred at the request and with the consent of the purchaser; and

1077 2. Collect a reasonable fee for preparing the resale certificate, not to exceed \$325, if (i) the
1078 amount of the fee (†) reflects actual cost of the unit owners' association, (ii) the amount of the fee
1079 is established expressly set forth in the contract between the unit owners' association and any
1080 ~~managing agent~~ common interest community manager, and (iii) the amount of the fee is disclosed
1081 on the unit owners' association's website or the website of its ~~managing agent~~ common interest
1082 community manager. Neither the unit owners' association nor its ~~management agent~~ common
1083 interest community manager, if any, shall require payment of such fee as a prerequisite to the
1084 issuance of such resale certificate ~~cash or certified funds~~ unless the unit owner is delinquent in
1085 any payments due to the unit owners' association in excess of 30 days or if a check of the unit
1086 owner made payable to the unit owners' association was returned for insufficient funds within the
1087 last six months. In no event, however, shall the unit owners' association require reimbursement
1088 of any costs not expressly authorized in this subsection. Nor shall the unit owners' association
1089 charge any other fee for the preparation or issuance of such resale certificate or making such
1090 certificate available by electronic means except as expressly provided in this subsection.

1091 Except to the extent that the condominium instruments provide otherwise, any unit owners'
1092 association authorized to charge a fee for the furnishing of a resale certificate pursuant to this
1093 subsection shall promptly pay the fee to the ~~managing agent~~ common interest community
1094 manager where the ~~managing agent~~ common interest community manager furnishes the resale
1095 certificate and shall assess the fee against the unit for which the certificate was prepared. The fee
1096 shall be treated as an assessment against the unit owner's condominium unit for the purposes of §
1097 55-79.84. The purchaser shall not be responsible for payment of the fee. The maximum
1098 allowable amount of such fee shall adjust annually based on the annual increases in the United
1099 States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
1100 by the Bureau of Labor Statistics of the U. S. Department of Labor.

1101 G. When a resale certificate has been issued as required by this section, the unit owners'
1102 association shall, as to the purchaser, be bound by the statements set forth therein as to the status
1103 of the assessment account and the status of the unit with respect to any violation of the
1104 condominium instruments as of the date of the resale certificate unless the purchaser had actual
1105 knowledge that the contents of the resale certificate were in error.

1106 H. If the unit owners' association has been requested to furnish the resale certificate required by
1107 this section and has been paid the appropriate fee, its failure to provide the resale certificate in
1108 substantially the form provided herein within fourteen days from the actual receipt of the request
1109 by an officer, director or agent of the unit owners' association shall be deemed a waiver of any
1110 claim for delinquent assessments or of any violation of the condominium instruments, rules and
1111 regulations, or architectural guidelines existing as of the date of the request with respect to the
1112 subject unit. The unit owners' association shall be liable to the seller in an amount equal to the
1113 actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall
1114 nevertheless be obligated to abide by the condominium instruments, rules and regulations, and
1115 architectural guidelines of the unit owners' association as to all matters arising after the date of
1116 the settlement of the sale. The settlement agent, as defined in § 6.1-2.20, when transmitting funds
1117 to a unit owners' association or otherwise upon request, shall provide the unit owners' association
1118 with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the
1119 subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any
1120 funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise
1121 prohibited, shall satisfy these requirements.

1122 I. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this
1123 chapter, the provisions and requirements of this section shall apply to any such resale of a
1124 condominium unit created under the provisions of the Horizontal Property Act (§ 55-79.1 et
1125 seq.).

1126 J. The resale certificate required by this section need not be provided in the case of:

1127 1. A disposition of a unit by gift;

1128 2. A disposition of a unit pursuant to court order if the court so directs; or

1129 3. A disposition of a unit by foreclosure or deed in lieu of foreclosure.

1130 K. In any transaction in which a resale certificate is required and a trustee acts as the seller in the
1131 sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners'
1132 association and provide the resale certificate to the purchaser.

1133 § 55-79.98. General powers and duties of the ~~Real Estate Board~~ *Common Interest Community*
1134 *Board*.

1135 (a) The agency shall prescribe reasonable rules which shall be adopted, amended or repealed in
1136 compliance with law applicable to the administrative procedure of agencies of government. The
1137 rules shall include but not be limited to provisions for advertising standards to assure full and fair

- 1138 disclosure; provisions for operating procedures; and other rules as are necessary and proper to
1139 accomplish the purpose of this chapter.
- 1140 (b) The agency by rule or by an order, after reasonable notice and hearing, may require the filing
1141 of advertising material relating to condominiums prior to its distribution.
- 1142 (c) If it appears that a person has engaged or is about to engage in an act or practice constituting
1143 a violation of a provision of this chapter, or a rule or order hereunder, the agency, with or
1144 without prior administrative proceedings may bring an action in the circuit court of the city or
1145 county in which any portion of the condominium is located to enjoin the acts or practices and to
1146 enforce compliance with this chapter or any rule or order hereunder. Upon proper showing,
1147 injunctive relief of temporary restraining orders shall be granted. The agency is not required to
1148 post a bond in any court proceedings or prove that any other adequate remedy at law exists.
- 1149 (c1) With respect to any lawful process served upon the agency pursuant to the appointment
1150 made in accordance with subdivision A 1 of § 55-79.89, the agency shall forthwith cause the
1151 same to be sent by registered or certified mail to any of the principals, officers, directors,
1152 partners, or trustees of the declarant listed in the application for registration at the last address
1153 listed in such application or any annual report.
- 1154 (d) The agency may intervene in any suit involving the declarant. In any suit by or against a
1155 declarant involving a condominium, the declarant shall promptly furnish the agency notice of the
1156 suit and copies of all pleadings.
- 1157 (e) The agency may:
- 1158 (1) Accept registrations filed in other states or with the federal government;
- 1159 (2) Contract with similar agencies in this Commonwealth or other jurisdictions to perform
1160 investigative functions;
- 1161 (3) Accept grants in aid from any governmental source.
- 1162 (f) The agency shall cooperate with similar agencies in other jurisdictions to establish uniform
1163 filing procedures and forms, uniform public offering statements, advertising standards, rules and
1164 common administrative practices.
- 1165 § 55-362. Definitions.
- 1166 When used in this chapter, or in a time-share instrument, unless the context requires a different
1167 meaning:
- 1168 "Additional land" has the meaning ascribed to it in subsection C of § 55-367;
- 1169 "Alternative purchase" means anything valued in excess of \$100 which is offered to a potential
1170 purchaser by the developer during the developer's sales presentation and which is purchased by

- 1171 such potential purchaser for more than \$100, even though the purchaser did not purchase a time-
1172 share. An alternative purchase is not a time-share. A membership camping contract as defined in
1173 § 59.1-313 is not an alternative purchase. An alternative purchase shall be registered with the
1174 Board unless it is otherwise registered as a travel service under the Virginia Travel Club Act (§
1175 59-445 et seq.), and shall include, without limitation, vacation packages (howsoever
1176 denominated) and exit programs (howsoever denominated);
- 1177 "Association" means the association organized under the provisions of § 55-368;
- 1178 "Board" means the ~~Real Estate Board~~ *Common Interest Community Board*, an agency within the
1179 meaning of the Administrative Process Act (§ 2.2-4000 et seq.);
- 1180 "Board of directors" means an executive and administrative entity, by whatever name
1181 denominated, designated in a time-share estate project instrument as the governing body of the
1182 time-share estate owners' association;
- 1183 "Common elements" means the real estate, improvements thereon, and the personalty situate
1184 within the time-share project that are subject to the time-share program. "Common elements"
1185 shall not include the units and the time-shares;
- 1186 "Consumer documents" means the aggregate of the following documents: the reverter deed, note,
1187 and the deed of trust. A consumer document shall be deemed one of the consumer documents;
- 1188 "Contract," "sales contract," "purchase contract," "contract of purchase" or "contract to purchase"
1189 shall be interchangeable throughout this chapter and shall mean any legally binding instrument
1190 executed by the developer and a purchaser whereby the developer is obligated to sell and the
1191 purchaser is obligated to purchase either a time-share and its incidental benefits or an alternative
1192 purchase registered under this chapter;
- 1193 "Conversion time-share project" means a real estate improvement, which prior to the disposition
1194 of any time-share, was wholly or partially occupied by persons as their permanent residence or
1195 on a transient pay-as-you-go basis other than those who have contracted for the purchase of a
1196 time-share and those who occupy with the consent of such purchasers;
- 1197 "Deed" means the instrument by which title to a time-share estate is transferred from one person
1198 to another person;
- 1199 "Deed of trust" means the instrument conveying the time-share estate that is given as security for
1200 the payment of the note;
- 1201 "Default" means either a failure to have made any payment in full and on time or a violation of a
1202 performance obligation required by a consumer document for a period of no less than 60 days;
- 1203 "Developer" means any person or group of persons acting in concert who (i) offers to dispose of
1204 a time-share or its or their interest in a time-share unit for which there has not been a previous
1205 disposition or (ii) applies for registration of the time-share program;

- 1206 "Developer control period" has the meaning ascribed to it in § 55-369;
- 1207 "Development right" means any right reserved by the developer to create additional units which
1208 may be dedicated to the time-share program;
- 1209 "Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other
1210 than a transfer or release of security for a debt;
- 1211 "Exchange agent" or "exchange company" means a person or persons who exchange or offer to
1212 exchange time-shares in an exchange program with other time-shares;
- 1213 "Exchange program" means any opportunity or procedure for the assignment or exchange of
1214 time-shares among owners in other time-share programs as evidenced by a past or present
1215 written agreement executed between an exchange company and the developer or the time-share
1216 estate association; however, an "exchange program" shall not be either an incidental benefit or an
1217 opportunity or procedure whereby a time-share owner can exchange his time-share for another
1218 time-share within either the same time-share or another time-share project owned in part by the
1219 developer;
- 1220 "Guest" means a person who is on the project, additional land or development at the request of
1221 an owner, developer, association or managing agent, or a person otherwise legally entitled to be
1222 thereon. A guest includes, without limitation, family members of owners, time-share exchange
1223 participants, merchants, purveyors, vendors and employees thereof, and of the developer and
1224 association.
- 1225 "Incidental benefit" means anything valued in excess of \$100 provided by the developer that is
1226 acquired by a purchaser upon acquisition of a time-share and includes without limitation
1227 exchange rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral
1228 awards, and golf and tennis packages. An incidental benefit is not a time-share or an exchange
1229 program. An incidental benefit shall not be registered with the Board;
- 1230 "Inherent risks of project activity" mean those dangers or conditions that are an integral part of a
1231 project activity, including certain hazards, such as surface and subsurface conditions; natural
1232 conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and
1233 ordinary dangers of structures or equipment ordinarily used in association or time-share
1234 operations. Inherent risks of project activity also include the potential of a participant to act in a
1235 negligent manner that may contribute to injury to the participant or others, including failing to
1236 follow instructions given by the project professional or failing to exercise reasonable caution
1237 while engaging in the project activity.
- 1238 "Lien holder" means either a person who holds an interest in an encumbrance that is not released
1239 of record as to a purchaser or such person's successor in interest who acquires title to the time-
1240 share project at foreclosure or by deed in lieu of foreclosure, or other instrument however
1241 denominated;

- 1242 "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of
1243 the management of a time-share project;
- 1244 "Managing entity" means the managing agent or, if there is no managing agent, the time-share
1245 owners' association in a time-share estate project and the developer in a time-share use project;
- 1246 "Material change" means a change in any information or document disclosed in or attached to the
1247 public offering statement which renders inaccurate, incomplete or misleading any information or
1248 document in such a way as to affect substantially a purchaser's rights or obligations, but shall not
1249 include a change (i) in the real estate tax assessment or rate, utility charges or deposits,
1250 maintenance fees, association dues, assessments, special assessments or any recurring time-share
1251 expense item provided the change is made known (a) immediately to the prospective purchaser
1252 by a written addendum in the public offering statement and (b) to the Board by filing with the
1253 developer's annual report copies of the updated changes occurring over the immediately
1254 preceding 12 months; (ii) which is an aspect or result of the orderly development of the time-
1255 share project in accordance with the time-share instrument; (iii) resulting from new, updated, or
1256 amended information contained in the annual report prepared and distributed pursuant to § 55-
1257 370.1; (iv) correcting spelling, grammar, omissions or other similar errors not affecting the
1258 substance of the public offering statement; or (v) occurring in the issuance of an exchange
1259 company's updated annual report or disclosure document, provided upon its receipt by the
1260 developer, it shall be distributed in lieu of all others in order to satisfy § 55-374;
- 1261 "Note" means the instrument that evidences the debt occasioned by the deferred purchase of a
1262 time-share;
- 1263 "Offering" or "offer" means any act to sell, solicit, induce, or advertise, which originates in this
1264 Commonwealth, whether by radio, television, telephone, newspaper, magazine, or mail, whereby
1265 a person is given an opportunity to acquire a time-share;
- 1266 "Participant" means any person, other than a project professional, who engages in a project
1267 activity.
- 1268 "Person" means one or more natural persons, corporations, partnerships, associations, trustees of
1269 a trust, limited liability companies, other entities, or any combination thereof capable of holding
1270 title to real property;
- 1271 "Possibility of reverter" means a provision contained in a reverter deed whereby the time-share
1272 estate automatically reverts or transfers back to the developer upon satisfaction of the
1273 requirements imposed by § 55-376.1;
- 1274 "Product" means each time-share and its incidental benefits and all alternative purchases that are
1275 registered with the Board pursuant to this chapter;
- 1276 "Project" means the same as the term "time-share project";

- 1277 "Project activity" means any activity carried out or conducted on a common element, within a
1278 time-share unit or elsewhere in the project, additional land or development, that allows owners,
1279 their guests, and members of the general public to view, observe, participate or enjoy activities,
1280 including swimming pools, spas, sporting venues, and cultural, historical or harvest-your-own
1281 activities, other amenities and events, or natural activities and attractions for recreational,
1282 entertainment, educational or social purposes. An activity is a project activity whether or not the
1283 participant paid to participate in the activity.
- 1284 "Project instrument" means any recorded documents, by whatever name denominated, which
1285 create the time-share project and program and which may contain restrictions or covenants
1286 regulating the use, occupancy, or disposition of time-shares in a project;
- 1287 "Project professional" means any person who is engaged in the business of providing one or
1288 more project activities, whether or not for compensation. For the purposes of this definition, the
1289 developer, association, and managing entity shall each be deemed a project professional.
- 1290 "Public offering statement" means the statement required by § 55-374;
- 1291 "Purchaser" means any person other than a developer or lender who owns or acquires a product,
1292 or who otherwise enters into a contract for the purchase of a product;
- 1293 "Reverter deed" means the deed from developer to a grantee that contains a possibility of
1294 reverter;
- 1295 "Sales person" means a person who sells or offers to sell time-share interests in a time-share
1296 program;
- 1297 "Situs" means the place outside the Commonwealth where a developer's time-share project is
1298 located;
- 1299 "Situs Time-Share Act" means the Act, howsoever denominated, that regulates the offering,
1300 disposition, and sale of time-shares applicable to the property outside the Commonwealth where
1301 the time-share project is located;
- 1302 "Time-share" means either a time-share estate or a time-share use plus its incidental benefits;
- 1303 "Time-share estate" means a right to occupy a unit or any of several units during five or more
1304 separated time periods over a period of at least five years, including renewal options, coupled
1305 with a freehold estate or an estate for years in a time-share project or a specified portion thereof;
- 1306 "Time-share estate occupancy expense" has the meaning ascribed to it in § 55-369;
- 1307 "Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof
1308 to occupy units not more than four weeks in any one year period; and (ii) for which the down
1309 payment is not more than 20 percent of the total purchase price of the time-share estate;

1310 "Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with respect to
1311 the operation, maintenance, administration or insuring of the time-shares, units, and common
1312 elements comprising the entire time-share project, whether or not incurred for the repair,
1313 renovation, upgrade, refurbishing or capital improvements; and (ii) any allocations of reserves;

1314 "Time-share instrument" means any document, however denominated, which creates the time-
1315 share project and program, and which may contain restrictions or covenants regulating the use,
1316 occupancy, or disposition of time-shares in a project;

1317 "Time-share owner" or "owner" means a person who is an owner or co-owner of a time-share
1318 other than as security for an obligation;

1319 "Time-share program" or "program" means any arrangement of time-shares in one or more time-
1320 share projects whereby the use, occupancy, or possession of real property has been made subject
1321 to either a time-share estate or time-share use in which such use, occupancy, or possession
1322 circulates among owners of the time-shares according to a fixed or floating time schedule on a
1323 periodic basis occurring over any period of time in excess of five years;

1324 "Time-share project" means all of the real property subject to a time-share program created by
1325 the execution of a time-share instrument;

1326 "Time-share use" means a right to occupy a time-share unit or any of several time-share units
1327 during five or more separated time periods over a period of at least five years, including renewal
1328 options, not coupled with a freehold estate or an estate for years in a time-share project or a
1329 specified portion thereof. "Time-share use" shall not mean a right to use which is subject to a
1330 first-come, first-served, space-available basis as might exist in a country club, motel, hotel,
1331 health spa, campground, or membership or resort facility;

1332 "Time-share unit" or "unit" means the real property or real property improvement in a project
1333 which is divided into time-shares and designated for separate occupancy and use.

1334 § 55-362.1. Administrative agency.

1335 This chapter shall be administered by the Real Estate Board *Common Interest Community Board*,
1336 which is herein called the "Board."

1337 55-374.2. Exchange programs.

1338 A. Any exchange company which offers an exchange program in the Commonwealth shall
1339 prepare and register with the Board a disclosure document including, but not limited to, the
1340 following:

1341 1. The name and address of the exchange company;

1342 2. The names and addresses of the top three officers, all directors, and, if the exchange company
1343 is privately held, all shareholders owning five percent or more interest in the exchange company;

- 1344 3. Whether the exchange company or any of its officers or directors has any legal or beneficial
1345 interest in any developer or managing agent for any time-share program participating in the
1346 exchange program and, if so, the name and location of the time-share project and the nature of
1347 the interest;
- 1348 4. Unless the exchange company is also the developer or an affiliate, a statement that the
1349 purchaser's contract with the exchange company is a contract separate and distinct from the sales
1350 contract;
- 1351 5. Whether the purchaser's participation in the exchange program is dependent upon the
1352 continued affiliation of the time-share project with the exchange program;
- 1353 6. Whether the purchaser's membership or participation, or both, in the exchange program is
1354 voluntary or mandatory;
- 1355 7. A complete and accurate description of the terms and conditions of the purchaser's contractual
1356 relationship with the exchange company and the procedure by which changes in the terms and
1357 conditions of the exchange contract may be made;
- 1358 8. A complete and accurate description of the procedure to qualify for and effectuate exchanges;
- 1359 9. A complete and accurate description of all limitations, restrictions, or priorities employed in
1360 the operation of the exchange program including, but not limited to, limitations on exchanges
1361 based on seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the
1362 event that such limitations, restrictions, or priorities are not uniformly applied by the exchange
1363 program, a clear description of the manner in which they are applied;
- 1364 10. Whether exchanges are arranged on a space available basis and whether any guarantees of
1365 fulfillment of specific requests for exchanges are made by the exchange program;
- 1366 11. Whether and under what circumstances an owner, in dealing with the exchange company,
1367 may lose the use of occupancy of his time-share in any properly applied for exchange, without
1368 being provided with substitute accommodations by the exchange company;
- 1369 12. The fees or range of fees for participation by owners in the exchange program, a statement of
1370 whether any such fees may be altered by the exchange company, and the circumstances under
1371 which alterations may be made;
- 1372 13. The name and address of the site of each time-share property, accommodation or facility
1373 participating in the exchange program;
- 1374 14. The number of units in each property participating in the exchange program which are
1375 available for occupancy and which qualify for participation in the exchange program, expressed
1376 within the following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

1377 15. The number of owners with respect to each time-share program or other property who are
1378 eligible to participate in the exchange program, expressed within the following numerical
1379 groupings: 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria
1380 used to determine those owners currently eligible to participate in the exchange program;

1381 16. The disposition made by the exchange company of time-shares deposited with the exchange
1382 program by owners eligible to participate in the exchange program and not used by the exchange
1383 company in effecting exchanges;

1384 17. The following information, which, except as provided in subsection B of this section, shall be
1385 independently audited by a certified public accountant or accounting firm in accordance with the
1386 standards of the Accounting Standards Board of the American Institute of Certified Public
1387 Accountants and reported for each year no later than July 1 of the succeeding year, beginning no
1388 later than July 1, 1985:

1389 a. The number of owners enrolled in the exchange program. Such numbers shall disclose the
1390 relationship between the exchange company and owners as being either fee paying or gratuitous
1391 in nature;

1392 b. The number of time-share properties, accommodations or facilities eligible to participate in the
1393 exchange program;

1394 c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed
1395 by the exchange company divided by the number of exchanges properly applied for, together
1396 with a complete and accurate statement of the criteria used to determine whether an exchange
1397 request was properly applied for;

1398 d. The number of time-shares for which the exchange company has an outstanding obligation to
1399 provide an exchange to an owner who relinquished a time-share during the year in exchange for
1400 a time-share in any future year;

1401 e. The number of exchanges confirmed by the exchange company during the year;

1402 18. A statement in boldfaced type to the effect that the percentage described in subdivision 17 c
1403 of this subsection is a summary of the exchange requests entered with the exchange company in
1404 the period reported and that the percentage does not indicate a purchaser's or owner's
1405 probabilities of being confirmed to any specific choice or range of choices, since availability at
1406 individual locations may vary.

1407 B. The information required by subsection A shall be accurate as of a date which is no more than
1408 thirty days prior to the date on which the information is delivered to the purchaser, except that
1409 the information required by subsection A, subdivisions 2, 12, 13, 14, 15 and 16 shall be accurate
1410 as of December 31 of the preceding year if the information is delivered between July 1 and
1411 December 31 of any year; information delivered between January 1 and June 30 of any year shall
1412 be accurate as of December 31 of the year prior to the preceding year. At no time shall such

1413 information be accurate as of a date which is more than eighteen months prior to the date of
1414 delivery. All references in this section to the word "year" shall mean calendar year.

1415 C. In the event an exchange company offers an exchange program directly to the purchaser, the
1416 exchange company shall deliver to such purchaser, simultaneously with such offering and prior
1417 to the execution of any contract between the purchaser and the exchange company, the
1418 information set forth in subsection A, above. The requirements of this subsection shall not apply
1419 to any renewal of a contract between a purchaser and an exchange company.

1420 D. Each exchange company must include the statement set forth in subdivision 18 of subsection
1421 A on all promotional brochures, pamphlets, advertisements, or other materials disseminated by
1422 the exchange company which also contain the percentage of confirmed exchanges described in
1423 subdivision 17 c of subsection A.

1424 E. An exchange company shall, on or before July 1 of each year, file with the Board and the
1425 association for the time-share program in which the time-shares are offered or disposed, the
1426 information required by this section with respect to the preceding year. If the Board determines
1427 that any of the information supplied fails to meet the requirements of this section, the Board may
1428 undertake enforcement action against the exchange company in accordance with the provisions
1429 of Article 6 (§ 55-396 et seq.) of this chapter. No developer shall have any liability arising out of
1430 the use, delivery or publication by the developer of written information provided to it by the
1431 exchange company pursuant to this section. Except for written information provided to the
1432 developer by the exchange company, no exchange company shall have any liability with respect
1433 to (i) any representation made by the developer relating to the exchange program or exchange
1434 company, or (ii) the use, delivery or publication by the developer of any information relating to
1435 the exchange program or exchange company. The failure of the exchange company to observe
1436 the requirements of this section, or the use by it of any unfair or deceptive act or practice in
1437 connection with the operation of the exchange program, shall be a violation of this section.

1438 F. The Board may establish by regulation reasonable fees for registration of the exchange
1439 company disclosure document. All fees shall be remitted by the Board to the Treasurer of the
1440 Commonwealth, and shall be placed to the credit of the ~~special fund of the Real Estate Board~~
1441 *Common Interest Community Management Information Fund established pursuant to § 55-529.*

1442 § 55-375. Escrow of deposits.

1443 A. Any deposit made in connection with the purchase or reservation of a product shall be held in
1444 escrow. All cash deposits shall be held in a separate bank account labeled and designated solely
1445 for that purpose.

1446 Such escrow account shall be insured by an instrumentality of the federal government and
1447 located in Virginia. All deposits shall be held in escrow until (i) delivered to the developer upon
1448 expiration of the purchaser's cancellation period provided the purchaser's right of cancellation
1449 has not been exercised, (ii) delivered to the developer because of the purchaser's default under a
1450 contract to purchase a time-share, or (iii) refunded to the purchaser. Failure to establish escrow

1451 accounts or to make the deposits as required by this section is prima facie evidence of willful
1452 violation of this section.

1453 B. The developer shall disclose in the contract or in the public offering that the deposit may not
1454 be held in escrow after expiration of the cancellation period and that such deposit is not protected
1455 as an escrow after expiration of the cancellation period. This disclosure shall include a statement
1456 of whether or not the developer reserves the option to sell or assign any promissory note given
1457 by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both
1458 disclosures shall appear in boldfaced type of a minimum size of ten points.

1459 C. There shall be filed with the ~~Real Estate Board~~ *Common Interest Community Board* a bond,
1460 letter of credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection
1461 A, in favor of the time-share purchasers. The bond, letter of credit, or cash shall be in an amount
1462 equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater.
1463 Such bond, letter of credit, or cash shall be maintained for so long as the developer offers time-
1464 shares in the project. The bond shall be with a surety company authorized to do business in
1465 Virginia.

1466 § 55-392.1. Filing fee.

1467 The Board may by regulation establish reasonable fees for registration. Until such regulations are
1468 adopted by the Board, the fee shall be in an amount equal to \$1 per time-share, except that the
1469 initial application fee shall not be less than \$500 nor more than \$1,500, and the fee for any
1470 application for registration of additional units shall be not less than \$200. All fees shall be
1471 remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of
1472 the special fund of the ~~Real Estate Board~~ *Common Interest Community Management Information*
1473 *Fund established pursuant to § 55-529.*

1474 § 55-484. Resales of cooperative interests.

1475 A. Except in the case of a sale where delivery of a public offering statement is required, or unless
1476 exempt under subsection B of § 55-476, a proprietary lessee shall furnish to a purchaser before
1477 execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a
1478 copy of the declaration, the bylaws, the rules or regulations of the association and a certificate
1479 containing:

1480 1. A statement disclosing the effect on the proposed disposition of any right of first refusal or
1481 other restraint on the free alienability of the cooperative interest;

1482 2. A statement setting forth the amount of the monthly common expense assessment and any
1483 unpaid common expense or special assessment currently due and payable from the selling
1484 proprietary lessee;

1485 3. A statement of any other fees payable by proprietary lessees;

- 1486 4. A statement of any capital expenditures anticipated by the association for the current and next
1487 two succeeding fiscal years;
- 1488 5. The current reserve study report or a summary thereof and a statement of the status and
1489 amount of any reserve or replacement fund and of any portions of those reserves designated by
1490 the association for any specified projects;
- 1491 6. The most recent regularly prepared balance sheet and income and expense statement, if any, of
1492 the association, including the amount of any debt owed by the association or to be assumed by
1493 the association, inclusive of principal and any accrued interest, loan fees and other similar
1494 charges;
- 1495 7. The current operating budget of the association;
- 1496 8. A statement of any unsatisfied judgments against the association and the status of any pending
1497 suits in which the association is a defendant;
- 1498 9. A statement describing any insurance coverage provided for the benefit of proprietary lessees;
- 1499 10. A statement as to whether the executive board has knowledge that any alterations or
1500 improvements to the unit or to the limited common elements assigned thereto violate any
1501 provision of the declaration;
- 1502 11. A statement as to whether the executive board has knowledge of any violations of the health
1503 or building codes with respect to the unit, the limited common elements assigned thereto or any
1504 other portion of the cooperative;
- 1505 12. A statement of the remaining term of any leasehold estate affecting the cooperative and the
1506 provisions governing any extension or renewal thereof;
- 1507 13. Except where no public offering statement was prepared, a statement that the public offering
1508 statement and any amendments thereto are records of the association available for inspection by
1509 the purchaser;
- 1510 14. An accountant's statement, if any was prepared, as to the deductibility for federal income
1511 taxes purposes by the proprietary lessee of real estate taxes and interest paid by the association;
- 1512 15. A statement of any restrictions in the declaration affecting the amount that may be received
1513 by a proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on
1514 termination of the cooperative; and
- 1515 16. Certification, if applicable, that the proprietary lessees' association has filed with the ~~Real~~
1516 ~~Estate Board~~ *Common Interest Community Board* the annual report required by § 55-504.1;
1517 which certification shall indicate the filing number assigned by the ~~Real Estate Board~~ *Common*
1518 *Interest Community Board* and the expiration date of such filing.

1519 B. The association, within 10 days after a request by a proprietary lessee, shall furnish a
1520 certificate containing the information necessary to enable the proprietary lessee to comply with
1521 this section. A proprietary lessee providing a certificate pursuant to subsection A is not liable to
1522 the purchaser for any erroneous information provided by the association and included in the
1523 certificate.

1524 C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in
1525 the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the
1526 failure or delay of the association to provide the certificate in a timely manner, but the purchase
1527 contract is voidable by the purchaser until the certificate has been provided and for five days
1528 thereafter or until conveyance, whichever first occurs.

1529 § 55-487. Conversion buildings.

1530 A. A declarant of a cooperative containing conversion buildings shall give each of the tenants of
1531 a conversion building formal notice of the conversion at the time the cooperative is registered by
1532 the agency. This notice shall advise each tenant of (i) the offering price of the cooperative
1533 interests for the unit he occupies, (ii) the projected common expense assessments against that
1534 cooperative interest for at least the first year of the cooperative's operation, (iii) any relocation
1535 services, public or private, of which the declarant is aware, (iv) any measure taken or to be taken
1536 by the declarant to reduce the incidence of tenant dislocation, and (v) the details of the relocation
1537 plan, if any is provided by the declarant, to assist tenants in relocating. No tenant or subtenant
1538 may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of
1539 rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the
1540 terms of the tenancy may not be altered during that period. Until the expiration of the 120-day
1541 period, the declarant shall have no right of access to the unit except as provided herein and in
1542 subsection A of § 55-248.18 and except that, upon 45 days' written notice to the tenant, the
1543 declarant may enter the unit in order to make additional repairs, decorations, alterations or
1544 improvements, provided (i) the making of the same does not constitute an actual or constructive
1545 eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at
1546 times when the tenant is absent from the unit. Failure to give notice as required by this section is
1547 a defense to an action for possession. The declarant shall also provide general notice to the
1548 tenants of the cooperative or proposed cooperative at the time of application to the agency, in
1549 addition to the formal notice required by this subsection.

1550 B. For sixty days after delivery or mailing of the formal notice described in subsection A, the
1551 person required to give the notice shall offer to convey the cooperative interest for each unit or
1552 proposed unit occupied for residential use to the tenant who leases the unit associated with that
1553 cooperative interest. A specific statement of the purchase price and the amount of any initial or
1554 special cooperative fee due from the purchaser on or before settlement of the purchase contract
1555 and the basis of such fee shall be given to the tenant. If a tenant fails to purchase the cooperative
1556 interest during that 60-day period, the offeror may not offer to dispose of an interest in that
1557 cooperative interest during the following 180 days at a price or on terms more favorable to the
1558 offeree than the price or terms offered to the tenant. This subsection does not apply to any
1559 cooperative interest in a conversion building if the unit which is part of that cooperative interest

1560 will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not
1561 substantially conform to the dimensions of the residential unit before conversion.

1562 C. If a seller, in violation of subsection B, conveys a cooperative interest to a purchaser for value
1563 who has no knowledge of the violation, that conveyance extinguishes any right a tenant may
1564 have under subsection B to purchase that cooperative interest if the deed states that the seller has
1565 complied with subsection B, but does not affect the right of a tenant to recover damages from the
1566 seller for a violation of subsection B.

1567 D. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated,
1568 and otherwise complies with the provisions of §§ 55-248.6 and 55-248.15, the notice also
1569 constitutes a notice to vacate as specified by §§ 55-222, 55-248.6 and 55-248.15. The details of
1570 the relocation plan, if any is provided by the declarant for assisting tenants in relocating, shall
1571 also be provided to the tenant.

1572 E. Any county, city or town may require by ordinance that the declarant of a conversion
1573 cooperative file with that governing body all information which is required by the agency
1574 pursuant to § 55-498 and a copy of the formal notice required by subsection A. Such information
1575 shall be filed with that governing body when the application for registration is filed with the
1576 agency, and such copy of the formal notice shall be filed with that governing body whenever it is
1577 sent to tenants. No fee shall be imposed for such filings with a governing body.

1578 F. The governing body of any county utilizing the urban county executive form of optional
1579 government (§§ 15.2-800 through 15.2-858) or the county manager plan of optional government
1580 (§§ 15.2-702 through 15.2-749), or of any city or town adjoining any such county, may require
1581 by ordinance that the declarant of any residential cooperative containing conversion buildings
1582 converted from multi-family rental use shall reimburse any tenant displaced by the conversion
1583 for amounts actually expended to relocate as a result of such dislocation. The reimbursement
1584 shall not be required to exceed the amount to which the tenant would have been entitled to
1585 receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been
1586 condemned by the Department of Highways and Transportation.

1587 G. Any county, city or town may require by ordinance that elderly or disabled tenants, occupying
1588 as their residence up to twenty percent of the apartments or units in a cooperative containing
1589 conversion buildings at the time of issuance of the general notice required by subsection A
1590 hereof, be offered leases or extensions of leases on the apartments or units they occupy or on
1591 other apartments or units of at least equal size and overall quality for up to three years beyond
1592 the date of such notice.

1593 The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided
1594 that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable
1595 apartments or units in the same market area as such conversion building.

1596 Such leases or extensions shall not be required, however, in the case of any apartments or units
1597 which will, in the course of the conversion, be substantially altered in physical layout, restricted

1598 exclusively to nonresidential use, or be converted in such a manner as to require relocation of the
1599 tenant in premises outside of the project being converted.

1600 H. For the purposes of this section:

1601 "Agency" means the ~~Real Estate Board~~ *Common Interest Community Board*.

1602 "Elderly" means not less than sixty-two years of age.

1603 "Disabled" means suffering from a severe, chronic physical or mental impairment which results
1604 in substantial functional limitations.

1605 I. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

1606 § 55-496. Administrative agency.

1607 This chapter shall be administered by the ~~Real Estate Board~~ *Common Interest Community Board*,
1608 which herein is called the "agency."

1609 § 55-504.1. Annual report by associations.

1610 A. The association shall file an annual report in a form and at such time as prescribed by
1611 regulations of the agency. The filing of the annual report required by this section shall commence
1612 upon the termination of any declarant control period reserved pursuant to § 55-460.

1613 B. The agency may accept copies of forms submitted to other state agencies to satisfy the
1614 requirements of this section if such forms contain substantially the same information required by
1615 the agency.

1616 C. The annual report shall be accompanied by a fixed fee in an amount established by the
1617 agency, *together with an annual assessment in an amount equal to the lesser of \$1,000 (or such*
1618 *other amount as the agency may establish by regulation) or .02% of the association's gross*
1619 *assessment income during the preceding calendar year.* All fees shall be remitted to the State
1620 Treasurer and shall be placed to the credit of the Common Interest Community Management
1621 Information Fund established pursuant to § 55-529.

1622 § 55-511. Contract disclosure statement; right of cancellation.

1623 A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in
1624 the contract that (i) the lot is located within a development which is subject to the Virginia
1625 Property Owners' Association Act; (ii) the Act requires the seller to obtain from the property
1626 owners' association an association disclosure packet and provide it to the purchaser; (iii) the
1627 purchaser may cancel the contract within three days after receiving the association disclosure
1628 packet or being notified that the association disclosure packet will not be available; (iv) if the
1629 purchaser has received the association disclosure packet, the purchaser has a right to request an
1630 update of such disclosure packet in accordance with § 55-512; and (v) the right to receive the

1631 association disclosure packet and the right to cancel the contract are waived conclusively if not
1632 exercised before settlement.

1633 For purposes of clause (iii), the association disclosure packet shall be deemed not to be available
1634 if (i) a current annual report has not been filed by the association with either the State
1635 Corporation Commission pursuant to § 13.1-936 or with the ~~Real Estate Board~~ *Common Interest*
1636 *Community Board* pursuant to § 55-516.1, (ii) the seller has made a written request to the
1637 association that the packet be provided and no such packet has been received within 14 days in
1638 accordance with subsection E of § 55-512, or (iii) written notice has been provided by the
1639 association that a packet is not available.

1640 B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole
1641 remedy is to cancel the contract prior to settlement.

1642 C. The information contained in the association disclosure packet shall be current as of a date
1643 specified on the association disclosure packet obtained by the seller in accordance with this
1644 section. The purchaser may cancel the contract: (i) within three days after the date of the
1645 contract, if on or before the date that the purchaser signs the contract, the purchaser receives the
1646 association disclosure packet or is notified that the association disclosure packet will not be
1647 available; (ii) within three days after receiving the association disclosure packet if the association
1648 disclosure packet or notice that the association disclosure packet will not be available is hand
1649 delivered or delivered by electronic means and a receipt obtained; or (iii) within six days after
1650 the postmark date if the association disclosure packet or notice that the association disclosure
1651 packet will not be available is sent to the purchaser by United States mail. The purchaser may
1652 also cancel the contract at any time prior to settlement if the purchaser has not been notified that
1653 the association disclosure packet will not be available and the association disclosure packet is not
1654 delivered to the purchaser. Notice of cancellation shall be provided to the lot owner or his agent
1655 by one of the following methods:

1656 1. Hand delivery;

1657 2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing,
1658 which may be either a United States postal certificate of mailing or a certificate of service
1659 prepared by the sender confirming such mailing;

1660 3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which
1661 may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or
1662 a certificate of service prepared by the sender confirming the electronic delivery; or

1663 4. Overnight delivery using a commercial service or the United States Postal Service.

1664 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice
1665 of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit
1666 to be returned promptly to the purchaser. The association may also send the association
1667 disclosure packet by electronic means unless either the seller or the purchaser requests a paper
1668 disclosure packet.

1669 D. Whenever any contract is canceled based on a failure to comply with subsection A or C or
1670 pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the
1671 cancellation, unless the parties to the contract agreed upon a shorter period.

1672 E. Any rights of the purchaser to cancel the contract provided by this chapter are waived
1673 conclusively if not exercised prior to settlement.

1674 F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may
1675 not be varied by agreement, and the rights conferred by this section and § 55-512 may not be
1676 waived.

1677 § 55-512. Contents of association disclosure packet; other requirements.

1678 A. Subject to the provisions of subsections C and F, the association shall make available to an
1679 owner or his authorized agent within 14 days after receipt of a written request therefor and
1680 receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller
1681 shall deliver to the purchaser. The information contained in the association disclosure packet
1682 shall be current as of a date specified on the association disclosure packet. If hand or
1683 electronically delivered, the written request and fee are deemed received on the date of delivery.
1684 If sent by United States mail, the request and fee are deemed received six days after the postmark
1685 date. An association disclosure packet shall contain the following:

1686 1. The name of the association and, if incorporated, the state in which the association is
1687 incorporated and the name and address of its registered agent in Virginia;

1688 2. A statement of any expenditure of funds approved by the association or the board of directors
1689 which shall require an assessment in addition to the regular assessment during the current year or
1690 the immediately succeeding fiscal year;

1691 3. A statement, including the amount of all assessments and any other mandatory fees or charges
1692 currently imposed by the association and associated with the purchase, disposition and
1693 maintenance of the lot and to the right of use of common areas, and the status of the account;

1694 4. A statement whether there is any other entity or facility to which the lot owner may be liable
1695 for fees or other charges;

1696 5. The current reserve study report or summary thereof, a statement of the status and amount of
1697 any reserve or replacement fund and any portion of the fund allocated by the board of directors
1698 for a specified project;

1699 6. A copy of the association's current budget or a summary thereof prepared by the association,
1700 and a copy of its statement of income and expenses or statement of its financial condition for the
1701 last fiscal year for which such statement is available, including a statement of the balance due of
1702 any outstanding loans of the association;

- 1703 7. A statement of the nature and status of any pending suit or unpaid judgment to which the
1704 association is a party which either could or would have a material impact on the association or its
1705 members or which relates to the lot being purchased;
- 1706 8. A statement setting forth what insurance coverage is provided for all lot owners by the
1707 association, including any fidelity bond maintained by the association, and what additional
1708 insurance would normally be secured by each individual lot owner;
- 1709 9. A statement that any improvement or alteration made to the lot, or uses made of the lot or
1710 common area assigned thereto by the prior lot owner, are not in violation of any of the
1711 instruments referred to in subdivision 12 of this subsection;
- 1712 10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner
1713 to place a sign on the owner's lot advertising the lot for sale;
- 1714 11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner
1715 to display any flag on the owner's lot including, but not limited to reasonable restrictions as to
1716 the size, place and manner of placement or display of such flag and the installation of any
1717 flagpole or similar structure necessary to display such flag;
- 1718 12. A copy of the current declaration, the association's articles of incorporation and bylaws, and
1719 any rules and regulations or architectural guidelines adopted by the association;
- 1720 13. A copy of the notice given to the lot owner by the association of any current or pending rule
1721 or architectural violation;
- 1722 14. A copy of the fully completed one-page cover sheet developed by the ~~Real Estate Board~~
1723 *Common Interest Community Board* pursuant to § 54.1-2105.1 54.1-2350; and
- 1724 15. Certification, if applicable, that the association has filed with the ~~Real Estate Board~~ *Common*
1725 *Interest Community Board* the annual report required by § 55-516.1; which certification shall
1726 indicate the filing number assigned by the ~~Real Estate Board~~ *Common Interest Community*
1727 *Board* and the expiration date of such filing.
- 1728 Failure to receive copies of such documents shall not excuse any failure to comply with the
1729 provisions thereof.
- 1730 The disclosure packet, once received by the seller from the association, shall be delivered by the
1731 seller to the purchaser. The association shall have no obligation to deliver the disclosure packet
1732 to the purchaser of the lot. The disclosure packet required by this section, shall not, in and of
1733 itself, be deemed a security within the meaning of § 13.1-501.
- 1734 B. The purchaser may submit a copy of the contract to the association with a request for
1735 assurance that the information required by this section previously furnished remains materially
1736 unchanged, or, if there have been material changes, a statement specifying such changes. The
1737 purchaser shall be provided with such assurances or such statement within 10 days of the receipt

1738 of such request by the association. The purchaser may be required to pay a fee for the preparation
1739 and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the
1740 association in providing such assurances but shall not exceed \$0.10 per page of copying costs or
1741 a total of \$50 for all costs incurred in updating the association disclosure packet. The association
1742 may also collect from the purchaser the actual costs incurred of any mailing or delivery
1743 requested by the purchaser pursuant to this subsection. In no event, however, shall the
1744 association require reimbursement of any costs not expressly authorized in this subsection. Nor
1745 shall the association charge any other fee for the preparation or issuance of such association
1746 disclosure packet or making such packet available by electronic means except as expressly
1747 provided in this subsection.

1748 C. The association may charge a fee for the preparation and issuance of the disclosure packet
1749 required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but
1750 shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in
1751 preparing the association disclosure packet. However, the association may:

1752 1. Upon mutual agreement with the seller, collect for actual costs incurred, in addition to any fee
1753 charged pursuant to this subsection:

1754 a. A rush fee, not to exceed \$25, for furnishing the disclosure packet within three business days
1755 from the actual receipt of the request;

1756 b. The actual cost of any mailing or delivery requested by the seller pursuant to this subsection;
1757 and

1758 c. Any actual cost incurred at the request and with the consent of the purchaser; and

1759 2. Collect a reasonable fee for preparing the association disclosure packet, not to exceed \$325, if
1760 *(i) the amount of the fee (†) reflects actual cost of the association, (ii) the amount of the fee is*
1761 *established expressly set forth in the contract between the association and any managing agent*
1762 *common interest community manager, and (iii) the amount of the fee is disclosed on the*
1763 *association's website or the website of its managing agent common interest community manager.*
1764 *Neither the association nor its management agent common interest community manager, if any,*
1765 *shall require payment of such fee as a prerequisite to the issuance of such association disclosure*
1766 *packet cash or certified funds unless the lot owner is delinquent in any payments due to the*
1767 *association in excess of 30 days or if a check of the lot owner made payable to the association*
1768 *was returned for insufficient funds within the last six months. In no event, however, shall the*
1769 *association require reimbursement of any costs not expressly authorized in this subsection. Nor*
1770 *shall the association charge any other fee for the preparation or issuance of such association*
1771 *disclosure packet or making such packet available by electronic means except as expressly*
1772 *provided in this subsection.*

1773 Any association authorized to charge a fee for the furnishing of a association disclosure packet
1774 pursuant to this subsection shall promptly pay the fee to the ~~managing agent~~ *common interest*
1775 *community manager* where the ~~managing agent~~ *common interest community manager* furnishes
1776 the association disclosure packet and shall assess the fee against the lot owner for which the

1777 disclosure packet was prepared. The fee shall be treated as an assessment against the member's
1778 lot for the purposes of § 55-516. The purchaser shall not be responsible for payment of the fee.
1779 The maximum allowable amount of such fee shall adjust annually based on the annual increases
1780 in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U),
1781 as published by the Bureau of Labor Statistics of the U. S. Department of Labor.

1782 D. When a disclosure packet has been issued as required by this section, the association shall, as
1783 to the purchaser, be bound by the statements set forth therein as to the status of the assessment
1784 account and the status of the lot with respect to any violation of any of the instruments referred to
1785 in subdivision 12 of subsection A as of the date of the statement unless the purchaser had actual
1786 knowledge that the contents of the disclosure packet were in error.

1787 E. If the association has been requested to furnish the disclosure packet required by this section
1788 and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially
1789 the form provided herein within 14 days from the actual receipt of the request by an officer,
1790 director or agent of the association shall be deemed a waiver of any claim for delinquent
1791 assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural
1792 guidelines existing as of the date of the request with respect to the subject lot. The association
1793 shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an
1794 amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the
1795 declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all
1796 matters arising after the date of the settlement of the sale. The settlement agent, as defined in §
1797 6.1-2.20, when transmitting funds to the association or otherwise upon request, shall provide the
1798 association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the
1799 address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the
1800 application of any funds transmitted. Providing a copy of the HUD-1 settlement statement,
1801 unless otherwise prohibited, shall satisfy these requirements.

1802 F. The contract disclosures required by § 55-511 and the disclosure packet required by this
1803 section need not be provided in the case of:

1804 1. A disposition of a lot by gift;

1805 2. A disposition of a lot pursuant to court order if the court so directs;

1806 3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;

1807 4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or

1808 5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or
1809 for the construction thereon of a dwelling unit to be occupied as his own residence, unless
1810 requested by such person or entity. If such disclosures are not requested, a statement in the
1811 contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive
1812 and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall
1813 nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and
1814 architectural guidelines of the association as to all matters.

1815 G. In any transaction in which a disclosure packet is required and a trustee acts as the seller in
1816 the sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and
1817 provide the packet to the purchaser.

1818 § 55-514.2. Deposit of funds; fidelity bond.

1819 A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall
1820 be kept in a fiduciary trust account in a federally insured financial institution separate from other
1821 assets of the managing agent. The funds shall be the property of the association and shall be
1822 segregated for each account in the records of the managing agent in a manner that permits the
1823 funds to be identified on an individual association basis.

1824 B. Any association collecting assessments for common expenses shall obtain and maintain a
1825 blanket fidelity bond or employee dishonesty insurance policy ~~covering~~ *insuring the association*
1826 *against losses resulting from theft or dishonesty committed by the officers, directors, and or*
1827 *persons employed by the association, and or committed by any managing agent and or*
1828 *employees of the managing agent. Such bond or insurance policy shall provide a minimum of*
1829 *\$10,000 in coverage in an amount equal to the lesser of \$1,000,000 or the amount of the reserve*
1830 *balances of the association and three times the monthly assessments of such association. The*
1831 *minimum coverage amount shall be \$10,000. The board of directors or managing agent may*
1832 *obtain such bond or insurance on behalf of the association.*

1833 § 55-516.1. Annual report by association.

1834 A. The association shall file an annual report in a form and at such time as prescribed by
1835 regulations of the ~~Real Estate Board~~ *Common Interest Community Board*.

1836 B. The ~~Real Estate Board~~ *Common Interest Community Board* may accept copies of forms
1837 submitted to other state agencies to satisfy the requirements of this section if such forms contain
1838 substantially the same information required by the ~~Real Estate Board~~ *Common Interest*
1839 *Community Board*.

1840 C. The annual report shall be accompanied by a fixed fee in an amount established by the ~~Real~~
1841 ~~Estate Board~~ *Common Interest Community Board*, *together with an annual assessment in an*
1842 *amount equal to the lesser of \$1,000 (or such other amount as the Board may establish by*
1843 *regulation) or .02% of the association's gross assessment income during the preceding calendar*
1844 *year. All fees shall be remitted to the State Treasurer and shall be placed to the credit of the*
1845 *Common Interest Community Management Information Fund established pursuant to § 55-529.*

1846 § 55-528. Definitions.

1847 As used in this chapter, unless the context requires a different meaning:

1848 "Association" includes condominium, cooperative, or property owners' associations.

1849 *"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the*
1850 *provisions of subdivisions (1), (2), and (4) of § 26-40, and repurchase agreements secured by*
1851 *obligations of the United States government or any agency thereof, and shall not mean accounts*
1852 *receivable, judgments, notes, accrued interest, or other obligations payable to the fund.*

1853 *"Board" means the ~~Real Estate Board~~ Common Interest Community Board.*

1854 *"Claimant" means upon proper application to the Director a receiver for a common interest*
1855 *community manager appointed pursuant to § 54.1-2354 in those cases in which there are not*
1856 *sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity*
1857 *by the subject common interest community manager or to pay an award of reasonable fees, costs*
1858 *and expenses to the receiver.*

1859 *"Common interest community" means real estate located within the Commonwealth subject to a*
1860 *declaration which contains lots, at least some of which are residential or occupied for*
1861 *recreational purposes, and common areas to which a person, by virtue of his ownership of a lot,*
1862 *is a member of an association and is obligated to pay assessments provided for in a declaration.*

1863 *"Declaration" means any instrument, however denominated, recorded among the land records of*
1864 *the county or city in which the development or any part thereof is located, that either (i) imposes*
1865 *on the association maintenance or operational responsibilities for the common area as a regular*
1866 *annual assessment or (ii) creates the authority in the association to impose on lots, or on the*
1867 *owners or occupants of such lots, or on any other entity any mandatory payment of money as a*
1868 *regular annual assessment in connection with the provision of maintenance or services or both*
1869 *for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area.*
1870 *"Declaration" includes any amendment or supplement to the instruments described in this*
1871 *definition.*

1872 *"Director" means the Director of the Department of Professional and Occupational Regulation.*

1873 *"Governing board" shall mean the governing board of an association, including the executive*
1874 *organ of a condominium unit owners' association, the executive board of a cooperative*
1875 *proprietary lessees' association, and the board of directors of a property owners' association.*

1876 *"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown*
1877 *on a recorded subdivision plat for a development or the boundaries of which are described in the*
1878 *declaration or in a recorded instrument referred to or expressly contemplated by the declaration,*
1879 *other than a common area, and (ii) a unit in a condominium association or a unit in a real estate*
1880 *cooperative.*

1881 § 55-529. Common Interest Community Management Information Fund.

1882 There is hereby created the Common Interest Community Management Information Fund to be
1883 used in the discretion of the Board to promote the improvement and more efficient operation of
1884 common interest communities through research and education. The Fund shall consist of money
1885 paid into it pursuant to §§ 54.1-2349, 55-79.93:1, 55-504.1, and 55-516.1. The Fund shall be

1886 established on the books of the Comptroller, and any funds remaining in such Fund at the end of
1887 the biennium shall not revert to the general fund but shall ~~remain in the Fund~~ *be transferred to*
1888 *the Common Interest Community Management Recovery Fund established pursuant to § 55-*
1889 *530.1. Interest earned on the Fund shall be credited to the Fund.*

1890 § 55-530. Powers of the Board; ~~community association liaison~~ *common interest community*
1891 *ombudsman; complaints.*

1892 A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by
1893 § 54.1-2105.1 *54.1-2350* and this chapter.

1894 ~~B. A community association liaison shall be appointed in accordance with § 54.1-303 who shall~~
1895 ~~administer the requirements of this chapter and serve as an information resource on issues~~
1896 ~~relating to the governance, administration and operation of common interest communities,~~
1897 ~~including the laws and regulations relating thereto. Such information may include nonbinding~~
1898 ~~interpretations of laws or regulations governing common interest communities and referrals to~~
1899 ~~public and private agencies offering alternative dispute resolution services, with a goal of~~
1900 ~~reducing and resolving conflicts among associations and their members. The compensation for~~
1901 ~~the community association liaison designated pursuant to this chapter shall be paid from the~~
1902 ~~Fund; provided that no more than sixty percent of the moneys collected annually in the Fund~~
1903 ~~shall be used for such purpose.~~

1904 ~~C. The Board shall use at least forty percent of the moneys collected annually in the Fund created~~
1905 ~~by this chapter for financing or promoting the following:~~

1906 ~~1. Information and research in the field of common interest community management and~~
1907 ~~operation;~~

1908 ~~2. Expeditious and inexpensive procedures for resolving common interest community disputes;~~

1909 ~~3. Seminars and educational programs designed to address topics of concern to community~~
1910 ~~associations; and~~

1911 ~~4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.~~

1912 ~~D. The Board shall establish accounting procedures whereby forty percent of the net revenues~~
1913 ~~collected in any fiscal year shall be expended in accordance with subsection C in the calendar~~
1914 ~~year that begins during that fiscal year.~~

1915 *B. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community*
1916 *Ombudsman and shall establish the Office of the Common Interest Community Ombudsman. The*
1917 *Common Interest Community Ombudsman shall be a member in good standing in the Virginia*
1918 *State Bar. The Office of the Common Interest Community Ombudsman shall promote and protect*
1919 *the interests of the members of associations. All state agencies shall assist and cooperate with*
1920 *the Office of the Common Interest Community Ombudsman in the performance of its duties*
1921 *under this chapter. The expenses for the operations of the Office of the Common Interest*

- 1922 Community Ombudsman, including the compensation paid to the Common Interest Community
1923 Ombudsman, shall be paid first from interest earned on deposits constituting the fund and the
1924 balance from the moneys collected annually in the fund.
- 1925 C. The Office of the Common Interest Community Ombudsman shall:
- 1926 1. Assist members in understanding their rights and the processes available to them according to
1927 the declaration and bylaws of the association.
- 1928 2. Answer inquiries from members and other citizens by telephone, mail, electronic mail and in
1929 person.
- 1930 3. Provide to members and other citizens information concerning common interest communities
1931 upon request.
- 1932 4. Make available, either separately or through an existing internet web site utilized by the
1933 Director, information as set forth in subdivisions 3 and such additional information as may be
1934 deemed appropriate.
- 1935 5. Receive the notices of complaint filed.
- 1936 6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on
1937 inquiries received, the types of assistance requested, notices of complaint received, any actions
1938 taken and the disposition of each such matter.
- 1939 7. Upon request, assist members in using the procedures and processes available to them in the
1940 association, including nonbinding explanations of laws or regulations governing common
1941 interest communities or interpretations thereof by the Board, and referrals to public and private
1942 agencies offering alternative dispute resolution services, with a goal of reducing and resolving
1943 conflicts among associations and their members. Such assistance may require the review of the
1944 declaration and other records of an association. An association shall provide such information
1945 to the Office of the Common Interest Community Ombudsman within a reasonable time upon
1946 request.
- 1947 8. Ensure that members have access to the services provided through the Office of the Common
1948 Interest Community Ombudsman and that the members receive timely responses from the
1949 representatives of the Office of the Common Interest Community Ombudsman to the inquiries.
- 1950 9. Upon request to the Director by any of the standing committees of the General Assembly
1951 having jurisdiction over common interest community or by the Housing Commission, provide to
1952 the Director for dissemination to the requesting parties assessments of proposed and existing
1953 common interest community laws and other studies of common interest community issues.
- 1954 10. Monitor changes in federal and state laws relating to common interest communities.

- 1955 11. Provide information to the Director that will permit the Director to report annually on the
1956 activities of the Office of the Common Interest Community Ombudsman to the standing
1957 committees of the General Assembly having jurisdiction over common interest communities and
1958 to the Housing Commission. The Director's report shall be filed by December 1 of each year,
1959 and shall include a summary of significant new developments in federal and state laws relating
1960 to common interest communities each year.
- 1961 12. Carry out activities as the Board determines to be appropriate.
- 1962 D. The Board may use the remainder of the interest earned on the balance of the fund and of the
1963 moneys collected annually and deposited in the fund for financing or promoting the following:
- 1964 1. Information and research in the field of common interest community management and
1965 operation;
- 1966 2. Expeditious and inexpensive procedures for resolving common interest community disputes;
- 1967 3. Seminars and educational programs designed to address topics of concern to community
1968 associations; and
- 1969 4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.
- 1970 E. The Board shall establish by regulation a requirement that each association shall establish
1971 reasonable procedures for the resolution of written complaints from the members of the
1972 association and other citizens which system shall include the following:
- 1973 1. A record of each complaint shall be maintained for no less than one year after the association
1974 acts upon the complaint.
- 1975 2. Such association shall provide complaint forms and/or written procedures to be given to
1976 persons who wish to register written complaints. Such forms or procedures shall include the
1977 address and telephone number of the association or its common interest community manager to
1978 which complaints shall be directed and the mailing address, telephone number, and electronic
1979 mail address of the Office of the Common Interest Community Ombudsman. Such forms and
1980 written procedures shall include a clear and understandable description of the complainant's
1981 right to give notice of adverse decisions pursuant to this section.
- 1982 F. A complainant may give notice to the Board of any final adverse decision in accordance with
1983 regulations promulgated by the Board. The notice shall be filed within thirty days of the final
1984 adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all
1985 records pertinent to the decision, and shall be accompanied by a twenty-five dollar filing fee.
1986 The fee shall be collected by the Director and paid directly into the state treasury and credited to
1987 the Common Interest Community Management Information Fund. The Board may, for good
1988 cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will
1989 cause undue financial hardship for the member. The Director shall provide a copy of the written
1990 notice to the association which made the final adverse decision.

1991 G. The Director or his designee, may request additional information concerning any notice of
1992 complaint from the association which made the final adverse decision. The association shall
1993 provide such information to the Director within a reasonable time upon request. If the Director
1994 upon review determines that the final adverse decision may be in conflict with laws or
1995 regulations governing common interest communities or interpretations thereof by the Board, the
1996 Director may, in his sole discretion, provide the complainant and the association with
1997 information concerning such laws or regulations governing common interest communities or
1998 interpretations thereof by the Board. The determination whether the final adverse decision may
1999 be in conflict with laws or regulations governing common interest communities or
2000 interpretations thereof by the Board is a matter within the sole discretion of the Director, whose
2001 decision is final and not subject to further review. Such determination shall not bind the
2002 complainant or the association which made the final adverse decision.

2003 E H. The Board shall issue a certificate of filing to each association which has properly filed in
2004 accordance with this title. The certificate shall include the date of registration and a unique
2005 registration number assigned by the Board.

2006 F-I. The Board may prescribe regulations which shall be adopted, amended or repealed in
2007 accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose
2008 of this chapter.

2009 § 55-530.1. Common Interest Community Management Recovery Fund.

2010 A. There is hereby created the Common Interest Community Management Recovery Fund to be
2011 used in the discretion of the Board to protect the interests of associations.

2012 B. Each common interest community manager, at the time of initial application for licensure,
2013 and each association filing its first annual report after the effective date hereof shall be assessed
2014 twenty-five dollars, which shall be specifically assigned to the Fund. Initial payments may be
2015 incorporated in any application fee payment or annual filing fee and transferred to the Fund by
2016 the Director within thirty days.

2017 All assessments, except initial assessments, for the Fund shall be deposited within three work
2018 days after their receipt by the Director, in one or more federally insured banks, savings and loan
2019 associations or savings banks located in the Commonwealth. Funds deposited in banks, savings
2020 institutions or savings banks, to the extent in excess of insurance afforded by the Federal Deposit
2021 Insurance Corporation or other federal insurance agency, shall be secured under the Security
2022 for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured
2023 banks, savings and loan associations or savings banks located in the Commonwealth shall not be
2024 considered investment of such funds for purposes of this section. Funds maintained by the
2025 Director may be invested in securities that are legal investments for fiduciaries under the
2026 provisions of § 26-40.01.

2027 Interest earned on the deposits constituting the Fund shall be used for administering the Fund.
2028 The remainder of this interest, at the discretion of the Board, may be transferred to Common
2029 Interest Community Information Fund or accrue to the Fund.

2030 *B. On and after July 1, 2011, the minimum balance of the fund shall be \$150,000. Whenever the*
2031 *Director determines that the balance of the fund is or will be less than such minimum balance,*
2032 *the Director shall immediately inform the Board. At the same time, the Director may recommend*
2033 *that the Board transfer a fixed amount of interest earnings to the fund to bring the balance of the*
2034 *fund to the amount required by this subsection. Such transfer of interest shall be considered by*
2035 *the Board within thirty days of the notification of the Director.*

2036 *C. If available interest earnings are insufficient to bring the balance of the fund to the minimum*
2037 *amount required by this section, or if a transfer of available interest earnings to the fund has not*
2038 *occurred, the Board shall assess each association and each common interest community*
2039 *manager within thirty days of notification by the Director, a sum sufficient to bring the balance*
2040 *of the fund to the required minimum amount. The amount of such assessment shall be allocated*
2041 *among the associations and common interest community managers in proportion to the each*
2042 *payor's most recently paid annual assessment, or if an association or common interest*
2043 *community manager has not paid an annual assessment previously, in proportion to the average*
2044 *annual assessment most recently paid by associations or common interest community managers*
2045 *respectively. The Board may order an assessment at any time in addition to any required*
2046 *assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a*
2047 *determination made by it or (ii) at the time of license renewal.*

2048 *Notice to common interest community managers and the governing boards of associations of*
2049 *these assessments shall be by first-class mail, and payment of such assessments shall be made by*
2050 *first-class mail addressed to the Director within forty-five days after the mailing of such notice.*

2051 *D. If any common interest community manager fails to remit the required payment within forty-*
2052 *five days of the mailing, the Director shall notify the common interest community manager by*
2053 *first-class mail at the latest address of record filed with the Board. If no payment has been*
2054 *received by the Director within thirty days after mailing the second notice, the license shall be*
2055 *automatically suspended. The license shall be restored only upon the actual receipt by the*
2056 *Director of the delinquent assessment.*

2057 *E. If any association fails to remit the required payment within forty-five days of the mailing, the*
2058 *Director shall notify the association by first-class mail at the latest address of record filed with*
2059 *the Board. If no payment has been received by the Director within thirty days after mailing the*
2060 *second notice, it shall be deemed a knowing and willful violation of this section by the governing*
2061 *board of the association.*

2062 *F. At the close of each fiscal year, whenever the balance of the fund exceeds \$2,000,000, the*
2063 *amount in excess of \$2,000,000 shall be transferred to the Virginia Housing Partnership*
2064 *Revolving Fund. Except for payments of costs as set forth in this Chapter 29 of Title 55 and*
2065 *transfers pursuant to this subsection, there shall be no transfers out of the fund, including*
2066 *transfers to the general fund, regardless of the balance of the fund.*

2067 *G. A claimant may seek recovery from the fund subject to the following conditions:*

2068 *1. A claimant may file a verified claim in writing to the Director for a recovery from the fund.*

- 2069 2. Upon proper application to the Director, in those cases in which there are not sufficient funds
2070 to pay an award of reasonable fees, costs and expenses to the receiver or to restore all funds that
2071 were or ought to have been held in a fiduciary capacity by the subject common interest
2072 community manager, the Director shall report to the Board the amount of any shortfall to the
2073 extent that there are not sufficient funds (a) to pay any award of fees, costs and expenses
2074 pursuant to § 54.1-2354.H. by the court appointing the receiver; or (b) to restore all funds that
2075 were or ought to have been held in a fiduciary capacity by the subject common interest
2076 community manager, as certified by the court appointing the receiver.
- 2077 3. If the Board finds there has been compliance with the required conditions, the Board shall
2078 issue a directive ordering payment of the amount of such shortfall to the claimant from the fund;
2079 provided that in no event shall such payment exceed the balance in the fund. When the fund
2080 balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct
2081 payment shall be applied first in satisfaction of any award of reasonable fees, costs and expenses
2082 to the receiver and second to restore the funds that were or ought to have been held in a
2083 fiduciary capacity by the subject common interest community manager. If the Board has reason
2084 to believe that there may be additional claims against the fund, the Board may withhold any
2085 payment(s) from the fund for a period of not more than one year. After such one-year period, if
2086 the aggregate of claims received exceeds the fund balance, the fund balance shall be prorated by
2087 the Board among the claimants and paid in the above payment order from the fund in proportion
2088 to the amounts of remaining unpaid.
- 2089 4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant
2090 from the fund such amount as shall be directed by the Board upon the execution and delivery to
2091 the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf
2092 and on behalf of the associations receiving distributions from the fund against the common
2093 interest community manager to the extent that such rights were satisfied from the fund.
- 2094 5. The claimant shall be notified in writing of the findings of the Board. The Board's findings
2095 shall be considered a "case decision" and judicial review of these findings shall be in
2096 accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).
- 2097 6. Notwithstanding any other provision of law, the Board shall have the right to appeal a
2098 decision of any court which is contrary to any distribution recommended or authorized by it.
- 2099 7. Upon payment by the Director to a claimant from the fund as provided in this subsection, the
2100 Board shall immediately revoke the license of the common interest community manager whose
2101 actions resulted in payment from the fund. The common interest community manager whose
2102 license was so revoked shall not be eligible to apply for a license as a common interest
2103 community manager until he has repaid in full the amount paid from the fund on his account,
2104 plus interest at the judgment rate of interest from the date of payment from the fund.
- 2105 8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary
2106 action against any common interest community manager for any violation of statute or
2107 regulation, nor shall the repayment in full by a common interest community manager of the
2108 amount paid from the fund on such common interest community manager's account nullify or

2109 *modify the effect of any disciplinary proceeding against such common interest community*
2110 *manager for any such violation.*

2111 **2. That this act shall become effective on July 1, 2008.**

2112 **3. That the Common Interest Community Board shall administer and enforce this act**
2113 **from July 1, 2008, excepting only those sections of the act expressly having a later effective**
2114 **date.**