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HOUSE BILL NO. 2098

House Amendments in [] - February 6, 2023

A BILL to amend and reenact §§ 55.1-1819 and 55.1-1959 of the Code of Virginia, relating to common interest communities; Property Owners' Association Act and Virginia Condominium Act.

Patron Prior to Engrossment—Delegate Bulova

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1819 and 55.1-1959 of the Code of Virginia are amended and reenacted as follows: § 55.1-1819. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power authority to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development to association members. At a special meeting of the association convened in accordance with the provisions of the association's bylaws, a majority of votes cast at such meeting may repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court shall award to the prevailing party court costs and reasonable attorney fees.

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

C. Before any action authorized in this section subsection B is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55.1-1815. If the a violation remains uncorrected or the same violation continues or occurs again, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents declaration or duly adopted rules and regulations.

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

If the [violation reoccurs member repeats a violation of the same provision of the declaration or rules and regulations within a 12-month period] after notice and an opportunity to be heard have been provided, the association may take action [after notice but] without providing the member a further opportunity to be heard.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature, and shall be treated as an assessment against the member's lot for the purposes of § 55.1-1833. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

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

F. After the date an action is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, the association shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the

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59 action. In addition, if the court finds that the violation remains uncorrected, the court may order the lot
60 owner to abate or remedy the violation.

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

63 **§ 55.1-1959. Suspension of services for failure to pay assessments; corrective action; assessment**
64 **of charges for violations; notice; hearing; adoption and enforcement of rules and regulations.**

65 A. Except as otherwise provided in this chapter, the executive board shall have the ~~power~~ *authority*
66 to establish, adopt, and enforce rules and regulations with respect to use of the common elements and
67 with respect to such other areas of responsibility assigned to the unit owners' association by the
68 condominium instruments, except where expressly reserved by the condominium instruments to the unit
69 owners. Rules and regulations may be adopted by resolution and shall be reasonably published or
70 distributed to the unit owners. At a special meeting of the unit owners' association convened in
71 accordance with the provisions of the condominium instruments, a majority of the votes cast at such
72 meeting may repeal or amend any rule or regulation adopted by the executive board. Rules and
73 regulations may be enforced by any method authorized by this chapter.

74 B. The unit owners' association shall have the ~~power, to the extent~~ *authority, unless* the
75 condominium instruments ~~or the condominium's rules and regulations expressly provide otherwise~~, to (i)
76 suspend a unit owner's right to use facilities or services, including utility services, provided directly
77 through the unit owners' association for ~~nonpayment of assessments that are more than 60 days past due~~,
78 to the extent that access to the unit through the common elements is not precluded and provided that
79 such suspension does not endanger the health, safety, or property of any unit owner, tenant, or occupant
80 and (ii) assess charges against any unit owner for any violation of the condominium instruments or of
81 the rules or regulations promulgated pursuant thereto for which such unit owner or his family members,
82 tenants, guests, or other invitees are responsible.

83 C. Before any action authorized in ~~this section~~ *subsection B* is taken, the unit owner shall be given a
84 reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the
85 unit owner at the address required for notices of meetings pursuant to § 55.1-1949. If the *same* violation
86 remains uncorrected *or occurs again*, the unit owner shall be given an opportunity to be heard and to be
87 represented by counsel before the executive board or such other tribunal as *specified in* the
88 condominium instruments or ~~its~~ *duly* adopted rules and regulations *specify*.

89 Notice of such hearing, including the actions that may be taken by the unit owners' association in
90 accordance with this section, shall, at least 14 days in advance, be hand delivered or mailed by
91 registered or certified United States mail, return receipt requested, to such unit owner at the address
92 required for notices of meetings pursuant to § 55.1-1949. Within seven days of the hearing, the hearing
93 result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such
94 unit owner at the address required for notices of meetings pursuant to § 55.1-1949.

95 *If the [violation reoccurs unit owner repeats a violation of the same provision of the condominium*
96 *instruments or rules and regulations within a 12-month period] after notice and an opportunity to be*
97 *heard have been provided, the unit owners' association may take action [after notice but] without*
98 *providing the unit owner a further opportunity to be heard.*

99 D. The amount of any charges assessed shall not exceed \$50 for a single offense, or \$10 per diem
100 for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's
101 condominium unit for the purpose of § 55.1-1966. However, the total charges for any offense of a
102 continuing nature shall not be assessed for a period exceeding 90 days.

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

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

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

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

115 G. This section shall not be construed to prohibit the grant by the condominium instruments of other
116 powers and responsibilities to the unit owners' association or its executive board.