

SENATE BILL NO. 526

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Williams Graves)

A BILL to amend and reenact §§ 55.1-2308 through 55.1-2312, 55.1-2316, and 55.1-2317 of the Code of Virginia, relating to Resale Disclosure Act; delivery of resale certificate; remedies.

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

**1. That §§ 55.1-2308 through 55.1-2312, 55.1-2316, and 55.1-2317 of the Code of Virginia are amended and reenacted as follows:**

**§ 55.1-2308. Contract for resale; disclosures.**

Unless exempt pursuant to § 55.1-2317, any contract for the resale of a unit in a common interest community shall disclose (i) that the unit is located in a common interest community; (ii) that the seller or the seller's agent is required to obtain from the association a resale certificate and provide it to the purchaser or the purchaser's agent; (iii) the purchaser's right to cancel the contract pursuant to § 55.1-2312; (iv) that the purchaser or the purchaser's agent may request an updated resale certificate pursuant to § 55.1-2311; and (v) that the purchaser's right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement. If the contract does not contain the disclosures required by this section, the purchaser's sole remedy is to cancel the contract prior to settlement.

**§ 55.1-2309. Resale certificate; delivery.**

A. The seller or the seller's agent shall ~~be required to~~ obtain the resale certificate from the association and provide such resale certificate to the purchaser or the purchaser's agent. This requirement shall not be waived or changed by agreement.

B. Unless exempt pursuant to § 55.1-2317, the association, the association's managing agent, or any third party preparing the resale certificate on behalf of the association shall deliver such resale

27 certificate within 14 days after a written request by a seller or seller's agent. If no resale certificate is  
28 delivered within 14 days after such request, the resale certificate shall be deemed unavailable.

29 C. The association, association's managing agent, or any third party preparing the resale certificate  
30 on behalf of the association shall deliver the resale certificate to the seller, or to such person as the seller  
31 may direct, either printed or in a generally accepted electronic format as the seller may request.

32 D. The information contained in the resale certificate shall be current as of a date specified on the  
33 resale certificate. The seller or purchaser may request an updated resale certificate as provided in § 55.1-  
34 2311.

35 **§ 55.1-2310. Resale certificate; form and contents.**

36 A. The association shall include the completed resale certificate form, developed by the common  
37 interest community board pursuant to subdivision 3 of § 54.1-2350, with supporting documentation set  
38 out in the following order:

39 1. The name, address, and phone numbers of the preparer of the resale certificate and any managing  
40 agent of the association;

41 2. A copy of the governing documents and any rules and regulations of the association;

42 3. A statement disclosing any restraint on the alienability of the unit for which the resale certificate  
43 is being issued;

44 4. A statement of the amount and payment schedules of assessments and any unpaid assessments  
45 currently due and payable to the association;

46 5. A statement of any other fees due and payable by an owner of the unit;

47 6. A statement of any other entity or facility to which the owner of the unit being sold may be  
48 liable for assessments, fees, or other charges due to the ownership of the unit;

49 7. A statement of the amount and payment schedule of any approved additional or special  
50 assessment and any unpaid additional or special assessment currently due and payable;

51 8. A statement of any capital expenditures approved by the association for the current and  
52 succeeding fiscal years;

- 53            9. A statement of the amount of any reserves for capital expenditures and of any portions of those  
54 reserves designated by the association for any specified projects;
- 55            10. The most recent balance sheet and income and expense statement, if any, of the association;
- 56            11. The current operating budget of the association;
- 57            12. The current reserve study, or a summary of such study;
- 58            13. A statement of any unsatisfied judgments against the association and the nature and status of  
59 any pending actions in which the association is a party and that could have a material impact on the  
60 association, the owners, or the unit being sold;
- 61            14. A statement describing any insurance coverage provided by the association for the benefit of  
62 the owners, including fidelity coverage, and any insurance coverage recommended or required to be  
63 obtained by the owners;
- 64            15. A statement as to whether the board has given or received written notice that any existing uses,  
65 occupancies, alterations, or improvements in or to the unit being sold or to the limited elements assigned  
66 thereto violate any provision of the governing documents or rules and regulations together with copies of  
67 any notices provided;
- 68            16. A statement as to whether the board has received written notice from a governmental agency  
69 of any violation of environmental, health, or building codes with respect to the unit being sold, the limited  
70 elements assigned thereto, or any other portion of the common interest community that has not been cured;
- 71            17. A copy of any approved minutes of meetings of the board held during the last six months;
- 72            18. A copy of any approved or draft minutes of the most recent association meeting;
- 73            19. A statement of the remaining term of any leasehold estate affecting a common area or common  
74 element, as those terms are defined in §§ 55.1-1800, 55.1-1900, and 55.1-2100, in the common interest  
75 community and the provisions governing any extension or renewal of such leasehold;
- 76            20. A statement of any limitation in the governing documents on the number or age of persons  
77 who may occupy a unit as a dwelling;

78 21. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to  
79 display the flag of the United States, including reasonable restrictions as to the size, time, place, and  
80 manner of placement or display of such flag;

81 22. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to  
82 install or use solar energy collection devices on the owner's unit or limited element;

83 23. A statement setting forth any restriction, limitation, or prohibition on the size, placement, or  
84 duration of display of political, for sale, or any other signs on the property;

85 24. A statement identifying any parking or vehicle restriction, limitation, or prohibition in the  
86 governing documents or rules and regulations;

87 25. A statement setting forth any restriction, limitation, or prohibition on the operation of a home-  
88 based business that otherwise complies with all applicable local ordinances;

89 26. A statement setting forth any restriction, limitation, or prohibition on an owner's ability to rent  
90 the unit;

91 27. In a cooperative, ~~an accountant's statement, if any was prepared, as to the deductibility for~~  
92 ~~federal income tax purposes by the owner of real estate taxes and interest paid by the association~~ a  
93 statement setting forth whether the cooperative association is aware of any statute, regulation, or rule  
94 applicable to the cooperative that would affect an owner's ability to deduct real estate taxes and interest  
95 paid by the cooperative association for federal income tax purposes;

96 28. A statement describing any pending sale or encumbrance of common elements;

97 29. A statement indicating any known project approvals currently in effect issued by secondary  
98 mortgage market agencies; and

99 30. Certification that the association has filed with the Common Interest Community Board the  
100 annual report required by law, which certification shall indicate the filing number assigned by the  
101 Common Interest Community Board and the expiration date of such filing.

102 **§ 55.1-2311. Updated resale certificate; financial update.**

103 A. If a resale certificate was issued more than 30 days but less than 12 months before settlement,  
104 the seller or the purchaser, upon proof of being the contract purchaser of the unit, may request an updated

105 resale certificate. The updated resale certificate shall be delivered to the person requesting it, or as such  
106 person may direct, in the format requested. The updated resale certificate shall be delivered within 10 days  
107 after the written request.

108 B. The updated resale certificate shall contain current information for all items that may have  
109 changed from the original resale certificate or a statement that there are no changes.

110 C. A settlement agent or other third party authorized by the seller or purchaser may request a  
111 financial update and the association shall provide such information within three business days after the  
112 written request.

113 **§ 55.1-2312. Cancellation of contract by purchaser.**

114 A. ~~The purchaser may cancel the contract:~~

115 1. ~~Within three days, or up to seven days if extended by the ratified real estate contract, after the~~  
116 ~~ratification date of the contract if the purchaser receives the resale certificate, whether or not complete~~  
117 ~~pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable on or before the date that the~~  
118 ~~contract is ratified;~~

119 2. ~~Within three days, or up to seven days if extended by the ratified real estate contract, from the~~  
120 ~~date the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a~~  
121 ~~notice that the resale certificate is unavailable if delivery occurs after the contract is ratified; or~~

122 3. ~~At any time prior to settlement if the resale certificate is not delivered to the purchaser. If~~  
123 ~~delivery of the resale certificate to the purchaser or purchaser's agent, whether or not complete pursuant~~  
124 ~~to § 55.1-2310, or a notice that the resale certificate is unavailable, occurs before the contract is ratified,~~  
125 ~~the purchaser may cancel the contract within a time period agreed upon by all parties in the ratified real~~  
126 ~~estate contract. If no time period is specified in the ratified real estate contract, the purchaser shall have~~  
127 ~~three days from the date of ratification to cancel the contract.~~

128 B. If delivery of the resale certificate to the purchaser or purchaser's agent, whether or not complete  
129 pursuant to § 55.1-2310, or a notice that such resale certificate is unavailable, occurs after the contract is  
130 ratified, the purchaser may cancel the contract within a time period agreed upon by all parties to the real  
131 estate contract. If no time period is specified in the ratified real estate contract, the purchaser shall have

132 three days from receipt of the resale certificate or notice that the resale certificate is unavailable to cancel  
133 the contract.

134 C. If the resale certificate or notice that the resale certificate is unavailable has not been delivered  
135 to the purchaser, the purchaser or purchaser's agent may cancel the contract at any time prior to settlement.

136 ~~B-D.~~ Written notice of cancellation shall be provided to the seller in accordance with the terms of  
137 the contract. The purchaser shall have the burden to demonstrate delivery of the notice of cancellation.

138 ~~C-E.~~ If the unit is governed by more than one association, the timeframe for the purchaser's right  
139 of cancellation shall run from the date of delivery of the last resale certificate.

140 ~~D-F.~~ Cancellation shall be without penalty, and the seller shall cause any deposit or escrowed  
141 funds to be returned promptly to the purchaser.

142 **§ 55.1-2316. Resale certificate; fees.**

143 A. An association may charge a post-closing fee and fees for preparation, delivery, and expedited  
144 delivery of a resale certificate, an updated resale certificate, or financial update and for the inspection of  
145 a unit performed to prepare the resale certificate or updated resale certificate. ~~Unless provided otherwise~~  
146 ~~by the association, the appropriate fees shall be paid when the resale certificate, updated resale certificate,~~  
147 ~~or financial update is requested.~~ The seller shall be responsible for all fees associated with the preparation  
148 and delivery of the resale certificate, including any fees for inspection of the unit. The requesting party  
149 shall pay any fees for the preparation and delivery of the updated resale certificate ~~or financial update.~~  
150 The seller shall be responsible for all fees associated with the preparation and delivery of the financial  
151 update unless the settlement agent or other requesting party agrees to pay for such fees.

152 B. Unless provided otherwise by the association or this section, fees charged by an association for  
153 the preparation and delivery of a resale certificate, an updated resale certificate or financial update shall  
154 be paid when the resale certificate, updated resale certificate, or financial update is requested. However,  
155 if the seller agrees to pay the fees for preparation and delivery of the financial update, the association or  
156 the association's management agent shall either (i) upon receipt of the request for the financial update,  
157 send instructions by electronic means to the seller for electronic payment or (ii) accept payment of such  
158 fees at the time of closing.

159            C. The Common Interest Community Board shall establish the maximum fees that the association  
160 may charge for such post-closing and preparation, delivery, and inspection; such maximum fees shall be  
161 commercially reasonable and consistent with the effort required to comply with the resale certificate  
162 requirements. The maximum allowable fees, as published by the Common Interest Community Board and  
163 effective as of January 12, 2023, shall be adjusted no less than every five years, as of January 1 of that  
164 year, in an amount not less than the annual increases for that five-year period in the United States Average  
165 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor  
166 Statistics of the U.S. Department of Labor or an equivalent successor index.

167            ~~C.~~D. The association shall publish and make available a schedule of the applicable fees (i) for  
168 preparation and delivery of the resale certificate, updated resale certificate, and financial update; (ii) for  
169 the inspection of a unit; and (iii) related to any post-closing costs.

170            ~~D.~~E. A post-closing fee to be collected at settlement may be imposed on the purchaser of the  
171 property for the purpose of establishing the purchaser as the owner of the property in the records of the  
172 association.

173            ~~E.~~F. No association may collect fees authorized by this section unless the association (i) is  
174 registered with the Common Interest Community Board; (ii) is current in filing the most recent annual  
175 report and fee with the Common Interest Community Board pursuant to § 55.1-1835, 55.1-1980, or 55.1-  
176 2182; (iii) is current in paying any assessment made by the Common Interest Community Board pursuant  
177 to § 54.1-2354.5; and (iv) provides the option to receive the disclosure packet electronically.

178            **§ 55.1-2317. Exemptions.**

179            A. The resale certificate required by this chapter need not be provided in the case of:

180            1. An initial disposition by a declarant of a unit to a person or entity that is not acquiring the unit  
181 for his own residence or for the construction of a dwelling unit to be occupied as his own residence, unless  
182 requested by such person or entity. The person or entity acquiring the unit shall nevertheless be obligated  
183 to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association  
184 as to all matters;

185            2. A disposition of a unit by gift;

- 186 3. A disposition of a unit pursuant to court order if the court so directs;
- 187 4. A disposition of a unit by foreclosure or deed in lieu of foreclosure;
- 188 5. A disposition of a unit by a sale at auction, when the resale certificate was made available as
- 189 part of the auction package for prospective purchasers prior to the auction; or
- 190 6. A disposition of a unit in a common interest community containing no residential units.
- 191 B. In any transaction in which a resale certificate is required and a trustee acts as the seller in the
- 192 sale or resale of a unit, the trustee shall obtain the resale certificate from the association and provide the
- 193 resale certificate to the purchaser.

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