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HOUSE BILL NO. 791

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology on February 17, 2014)

(Patron Prior to Substitute—Delegate LeMunyon)

A BILL to amend and reenact §§ 16.1-106, 55-79.80:2, and 55-513 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; rule enforcement.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-106, 55-79.80:2, and 55-513 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-106. Appeals from courts not of record in civil cases.

From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than \$50, exclusive of interest, any attorney fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or of a protective order pursuant to § 19.2-152.10, or of an action filed by a condominium unit owners' association pursuant to § 55-79.80:2, or of an action filed by a property owners' association pursuant to § 55-513, there shall be an appeal of right, if taken within 10 days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken and shall be heard de novo.

The court from which an appeal is sought may refuse to suspend the execution of a judgment that refuses, grants, modifies, or dissolves an injunction in a case brought pursuant to § 2.2-3713 of the Virginia Freedom of Information Act. A protective order issued pursuant to § 19.2-152.10, including a protective order required by § 18.2-60.4, shall remain in effect upon petition for or the pendency of an appeal or writ of error unless ordered suspended by the judge of a circuit court or so directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

§ 55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the executive organ shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common elements and with respect to such other areas of responsibility assigned to the unit owners' association by the condominium instruments, except where expressly reserved by the condominium instruments to the unit owners. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the condominium. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the condominium instruments and called for that purpose shall repeal or amend any rule or regulation adopted by the executive organ. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the prevailing party court costs and reasonable attorney fees.

B. The unit owners' association shall also have the power, to the extent the condominium instruments or duly adopted rules ~~duly adopted pursuant thereto~~ and regulations expressly so provide, or as provided in this section, to establish and adopt rule and regulation enforcement procedures, which procedures shall be limited to the power to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and; (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests or other invitees are responsible; and (iii) file legal action in general district or circuit court to seek an order to require that any violation of the condominium instruments or duly adopted rules and regulations be corrected.

The powers authorized in this section or by the condominium instruments shall be exercised by the unit owners' association in good faith and not exercised frivolously, vexatiously, or primarily for purposes of harassment of the unit owner.

C. Before any such suspension or charges may be imposed action authorized in subsection B is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55-79.75. If the violation remains uncorrected, the unit owner shall be given further notice

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60 and an opportunity to be heard and to be represented by counsel before the executive organ or such
61 other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

62 Notice of such hearing, including the ~~charges or other sanctions~~ actions that may be imposed taken
63 by the unit owners' association in accordance with this section, shall, at least 14 days in advance
64 thereof, be hand delivered or mailed by registered or certified United States mail, return receipt
65 requested, to such unit owner at the address ~~or addresses~~ required for notices of meetings pursuant to
66 § 55-79.75. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by
67 registered or certified mail, return receipt requested, to such unit owner at the address required for
68 notices of meetings pursuant to § 55-79.75.

69 D. The amount of any charges so assessed shall not exceed \$50 for a single offense, or \$10 per diem
70 for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's
71 condominium unit for the purpose of § 55-79.84. However, the total charges for any offense of a
72 continuing nature shall not be assessed for a period exceeding 90 days.

73 E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit owners'
74 association, by and through its counsel to collect the charges, obtain injunctive relief and correct the
75 violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

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

80 In any suit filed in general district court pursuant to this section, the court may enter default
81 judgment against the unit owner on the unit owners' association's sworn affidavit.

82 ~~C. F.~~ This section shall not be construed to prohibit the grant, by the condominium instruments, of
83 other powers and responsibilities to the unit owners' association or its executive organ.

84 § 55-513. Adoption and enforcement of rules.

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

96 B. The board of directors shall also have the power, to the extent the declaration or *duly adopted*
97 rules and regulations ~~duly adopted pursuant thereto~~ expressly so provide; *or as provided in this section,*
98 *to establish and adopt rule and regulation enforcement procedures, which procedures shall be limited to*
99 *the power to* (i) suspend a member's right to use facilities or services, including utility services, provided
100 directly through the association for nonpayment of assessments which are more than 60 days past due,
101 to the extent that access to the lot through the common areas is not precluded and provided that such
102 suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant ~~and~~; (ii)
103 assess charges against any member for any violation of the declaration or rules and regulations for
104 which the member or his family members, tenants, guests, or other invitees are responsible; *and (iii) file*
105 *legal action in general district or circuit court to seek an order to require that any violation of the*
106 *declaration or duly adopted rules and regulations be corrected.*

107 *The powers authorized in this section or by the declaration shall be exercised by the association in*
108 *good faith and not exercised frivolously, vexatiously, or primarily for purposes of harassment of the*
109 *member.*

110 C. Before any ~~such charges or suspension may be imposed~~ action authorized in subsection B is
111 taken, the member shall be given a reasonable opportunity to correct the alleged violation after written
112 notice of the alleged violation to the member at the address required for notices of meetings pursuant to
113 § 55-510.1. If the violation remains uncorrected, the member shall be given further notice and an
114 opportunity to be heard and to be represented by counsel before the board of directors or other tribunal
115 specified in the documents.

116 Notice of a hearing, including the ~~charges or other sanctions~~ actions that may be imposed taken by
117 the association in accordance with this section, shall be hand delivered or mailed by registered or
118 certified mail, return receipt requested, to the member at the address of record with the association at
119 least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand
120 delivered or mailed by registered or certified mail, return receipt requested, to the member at the address
121 of record with the association.

122 D. The amount of any charges so assessed shall not be limited to the expense or damage to the
123 association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any
124 offense of a continuing nature and shall be treated as an assessment against the member's lot for the
125 purposes of § 55-516. However, the total charges for any offense of a continuing nature shall not be
126 assessed for a period exceeding 90 days.

127 E. After the date a lawsuit is filed in the general district or circuit court by (i) the association, by
128 and through its counsel, to collect the charges, obtain injunctive relief and correct the violation or (ii)
129 the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in
130 favor of the association, it shall be entitled to collect such charges from the date the action was filed as
131 well as all other charges assessed pursuant to this section against the lot owner prior to the action. In
132 addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to
133 abate or remedy the violation.

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

136 F. *This section shall not be construed to prohibit the grant, by the declaration, of other powers and*
137 *responsibilities to the association or its board of directors.*