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HOUSE BILL NO. 956

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on March 9, 2010)

(Patron Prior to Substitute—Delegate Lingamfelter)

A BILL to amend and reenact §§ 55-79.75:2 and 55-513.1 of the Code of Virginia, relating to the Virginia Condominium Act and the Virginia Property Owners' Association Act; display of the flag of the United States.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.75:2 and 55-513.1 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.75:2. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. Unless expressly prohibited by the condominium instruments, In accordance with the federal Freedom to Display the American Flag Act of 2005, no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit owner from displaying upon property to which the unit owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the unit owners' association.

B. The unit owners' association may restrict the display of such flags in the common elements. A unit owners' association may establish reasonable restrictions as to the size, place, duration, and manner of placement or display of such flag.

C. In any action brought by the unit owners' association under § 55-79.80:2 for a violation of a flag restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the unit owners' association.

D. In any action brought by the unit owners' association under § 55-79.80:2, the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to the flag of the United States or any flagpole or similar structure necessary to display the flag of the United States was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to § 55-79.90 or 55-79.97.

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

A. Unless specifically prohibited by the association's rules and regulations or architectural guidelines provided in the disclosure packet required pursuant to § 55-509.5, the In accordance with the federal Freedom to Display the American Flag Act of 2005, no association shall not prohibit any lot owner from displaying upon property to which the lot owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. The association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the association.

B. The association may restrict the display of such flag in the common areas and may establish reasonable restrictions as to the time, size, place, duration, and manner of placement or display.

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

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

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