A BILL to amend and reenact §§ 55-79.52 and 55-515.2 of the Code of Virginia, relating to the Condominium and Property Owners’ Association Acts; rights of owners.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.52 and 55-515.2 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.52. Validity of condominium instruments; discrimination prohibited.

A. All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units other than such units as may be restricted to residential use only.

E. No provision of the condominium instruments or rules or regulations adopted pursuant thereto shall prohibit a unit owner or any person entitled to occupy a unit from exercising his constitutionally protected right of freedom of speech upon property to which the unit owner or person entitled to occupy a unit has a separate ownership interest or a right to exclusive possession. Any provision of the condominium instruments or rule or regulation adopted pursuant thereto that prohibits the exercise of such right upon such property shall be void as against public policy. A unit owners’ association may, however, establish reasonable time, place, and manner restrictions on such property provided such restrictions are necessary to protect a substantial interest of the unit owners’ association.

In any action brought by the unit owners’ association under § 55-79.80:2 for a violation of such restriction, the unit owners’ association shall bear the burden of proof that such time, place, or manner restriction is necessary to protect a substantial interest of the unit owners’ association.

F. The unit owners’ association may restrict a unit owner’s exercise of freedom of speech upon the common elements.

§ 55-515.2. Validity of declaration; corrective amendments.

A. All provisions of a declaration shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of a declaration shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a declaration restraining the alienation of lots other than such lots as may be restricted to residential use only.

E. The rule of property law known as the doctrine of merger shall not apply to any easement included in or granted pursuant to a right reserved in a declaration.

F. No provision of the declaration or rules or regulations adopted pursuant thereto shall prohibit a lot owner or any person entitled to occupy a lot from exercising his constitutionally protected right of freedom of speech upon property to which the lot owner or person entitled to occupy a lot has a separate ownership interest or a right to exclusive possession. Any provision of the declaration or rule or regulation adopted pursuant thereto that prohibits the exercise of such right upon such property shall be void as against public policy. An association may, however, establish reasonable time, place, and manner restrictions on such property provided such restrictions are necessary to protect a substantial interest of the association.

In any action brought by the association under § 55-513 for a violation of such restriction, the association shall bear the burden of proof that such time, place, or manner restriction is necessary to protect a substantial interest of the association.

G. The association may restrict a lot owner's exercise of freedom of speech upon the common area.
The declarant may unilaterally execute and record a corrective amendment or supplement to the declaration to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity in the declaration with respect to an objectively verifiable fact (including without limitation recalculating the liability for assessments or the number of votes in the association appertaining to a lot), within five years after the recordation of the declaration containing or creating such mistake, inconsistency, error or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of the declaration, the principal officer of the association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the board of directors. All corrective amendments and supplements recorded prior to July 1, 1997, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.